TRAVIS COUNTY PURCHASING OFFICE





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PURCHASING PROCEDURES GUIDE

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TravisCountytx.gov/purchasing



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SECTION 1. MISSION, VISION, VALUES, AND GUIDING PRINCIPLES

Mission: To support the needs of County departments to improve the quality of life for Travis County taxpayers.

Vision: To be a premier purchasing office that is a cornerstone for Travis County's growth and prosperity.

Values and Guiding Principles: Professionalism, Innovation, and Equity (Easy as PIE)



To strive for these lofty aspirations, the Purchasing Office is implementing the policies that enable the office and guide those who labor in its pursuits.

Purchasing Rules are incorporated in the Travis County Code as Chapter 32. These address the intent to attain goals reflecting excellence. The Code of Purchasing Ethic provides a rudder to navigate the path to integrity away from the shoals of conflicts of interest and respecting the vendors, fellow purchasing staff and County Employees generally. The accountability delegated to the office reflects the trust and confidence in it.

The intent of this Purchasing Procedures Guide is to provide assistance to both purchasing staff and the County elected and appointed officials to obtain the equipment, tools, supplies, services and whatever is needed to do their jobs and serve the residents of Travis County, Texas.

SECTION 2. PURCHASING PROCEDURES AND ROLES

2.001 The Purchasing Cycle

Before engaging in any County purchasing activities, it is important to understand that there are common characteristics between all purchases and following each of these processes ensures that the purchase is made in an open, fair, and efficient way.

The Purchasing Cycle identifies the five steps performed by public purchasing professionals for every purchase. The steps of the Purchasing Cycle are summarized as follows:

- a) Purchase Planning: Define the business need and establish the objectives of the purchase;
- b) Purchasing Method Decision: Identify the appropriate Purchasing Method and, if applicable, issue a solicitation;
- Vendor Selection: Fairly and objectively select the vendor that provides the Best Value to the County;
- d) Contract Formation & Award: Ensure that the awarded contract complies with Texas Purchasing Laws and other applicable purchasing law and contains provisions that achieve the objectives of the purchase; and
- e) Contract Management: Administer and enforce the terms of the contract.

2.002 Purchasing Procedures

The general purchasing procedures in this Purchasing Procedures Guide contain several steps. These responsibilities are often designated by statute. Purchasing begins with requirements planning and identification and ends with the receipt and acceptance of Goods and services and payment for them.

2.003 User Requirements and Restrictions

To avoid delays and comply with County policy and state law, User Departments should remember the following:

- a) Do not tell a vendor that you are purchasing any Goods or services.
- b) Do not purchase any Goods or services for your own personal benefit.
- c) Do not agree to purchase Goods that are delivered for use on a trial basis.
- d) Do not commit to acquire Goods or services without an authorized Purchase Order. Anyone obligating an expenditure of funds for Goods or services before securing a Purchase Order may be required to pay for them personally and may face criminal charges.
- e) Do not violate the Code of Purchasing Ethics.
 Avoid activities that are described as unethical or that create a conflict of interest or the perception of a conflict of interest.
- f) Do not use purchasing strategies that violate the law to avoid competition. Strategies that violate the law include:
 - Purchasing a series of component parts that would normally be purchased as a whole (component purchases);
 - (2) Purchasing Items in a series of separate purchases that normally would be purchased as a single purchase (separate purchases); and
 - (3) Purchasing Items over a period of time that normally would be purchased as one purchase (sequential purchases).

g) Do not violate or authorize someone else to violate the Purchasing Act.

The following persons **commit** the following criminal offenses and each act in violation of the law is a separate offense:

- (1) County officer Employee or intentionally or knowingly makes or authorizes separate, sequential, component purchases to avoid the requirements of the Competitive Procedures¹ Purchasing (Class misdemeanor); and
- (2) Other than as described above, any person who intentionally or knowingly violates the Purchasing Act or authorizes someone else to violate it² (Class C misdemeanor).
- h) Make sure funding is available before submitting a Shopping Cart. The law does not allow purchases that exceed departmental budgets. Purchasing does not process a Shopping Cart for which there is not adequate funding.
- i) Plan purchases and minimize the use of emergency and expedited purchases. Vendors may attempt to charge premium prices for Goods and services when there is insufficient time to explore alternative sources. Expedited purchases may also delay other purchases.
- j) Plan purchases to allow sufficient time to process Shopping Carts less than \$50,000.

The Purchasing Office is committed to processing all Shopping Carts within a reasonable time.

In general, User Departments should allow **1 to 2 weeks** after final approval of a Shopping Cart for all purchases under \$5,000 not ordered from existing County contracts, and **2 to 4 weeks** for purchases over \$5,000 and under \$50,000 not ordered from existing County contracts.

Contract Shopping Carts are generally processed within one day of receipt.

- k) Make sure that purchasing procedures are understood before ordering.
 - (1) Departments must make sure that all Employees who submit departmental Shopping Carts ("Purchasing Liaisons") have read and understand this Guide.
 - (2) Departments should also ensure that Purchasing Liaisons attend any training provided by the Purchasing Office.
- Coordinate with the Purchasing Office on receipt of Goods and services.
 - The County does not have centralized receiving. Each Department must individually receive its own Goods and services.
 - (2) Departments should contact the buyer on the Purchase Order to let Purchasing know if there are vendor performance issues, such as shortages, late delivery, or damaged merchandise.
 - (3) If the Good received cost more than \$500, the User Department must contact the Asset Manager to determine whether it is an asset that the Asset Manager must track and report in the inventory. User Departments should contact the Asset Manager to coordinate tagging.
- m) Report contractors who do not comply with contract terms and conditions or applicable law to the Purchasing Office.
 - (1) User Departments should copy the Compliance staff when reporting contractor performance issues.
 - (2) User Departments should assist the buyer and Compliance staff in monitoring documenting and resolving contractor performance deficiencies.

¹ Texas Local Government Code, Section 262.034

2.004 Solicitation Calendar

The County's internal calendar of events for solicitations includes the dates detailed in the solicitation documents and milestone dates of activities or events occurring pre- and post-solicitation identified to be critical to the success of the solicitation.

Critical path events that are addressed in this internal calendar of events may include routine activities, including the County's standard interdepartmental workflow, such as IT Assessment, Assets Review, HUB Review, etc.; procurement-specific events, like statutorily mandated project commencement dates, and the onboarding of a successor contractor before services by the incumbent contractor cease.

Below is an example of an internal calendar of events for a typical solicitation, beginning with presolicitation milestones, continuing to encompass the solicitation calendar of events, and ending with post-solicitation milestones. The days listed are approximate and depend on the specifics of the purchase.

TABLE 2.004 SOLICITATION TASK CALENDAR

TASK	DESCRIPTION		1 CALENDAR COMPLETE
	(Certain types of purchases, like technology and insurance, may take longer than the typical schedule shown.)	Non- negotiated Solicitation	Negotiated Solicitation
1	Complete solicitation request received from Department		
2	Assigned to Solicitation team		2
3	 Purchasing Review of Technical Specifications or Scope of Work (SOW) IT Assessment/review if applicable Assets review if applicable HUB Review for identification of subcontracting opportunities Project Team meeting if required 	7	21
4	Draft Solicitation (time begins upon acceptance of an approved SOW)		7
5	County Reviews (Attorney, User Department, Purchasing)		21
6	 Solicitation Issued Advertise if required (at least 15 days legally required) Pre-Response Conference if applicable Cut-off for questions from Vendors Addendum Issued if required Opening of Solicitation and responses due 		15
7	 Evaluation of Responses Responsiveness review HUB Good Faith Effort (GFE) Shortlist/Interviews if applicable 	7	30
8	Negotiations if applicable		21
9	Purchasing recommendation for contract award by Commissioners Court	22	22
10	Post-Award Management Insurance Certificate received Payment and Performance Bonds received if applicable Pre-Performance Meeting if applicable	7	7
11	Contracted services begin		
	TOTAL MINIMUM DAYS TO COMPLETE	81	146

2.005 Purchasing Office as Official Record Keeper of Contract History

Maintaining one complete master file for each solicitation and the resulting contract is critical. This file includes all documentation related to the purchase, including the solicitation, pre-award, contract award, post-award and close-out phases of the project. During the solicitation phase, the file provides information necessary for evaluation and for settling requests for clarifications and protests and appeals. After award, the file provides a basis for settling claims and disputes if they become administrative or court actions. Throughout the life of the transaction, the Purchasing Office master file should contain documents related to all of the following, if applicable to that transaction.

2.006 Master File Checklist

TABLE 2.006 MASTER FILE CHECKLIST BY PHASE

Phase		
Solicitation Phase	Purchase memo from User Department	
	2. Original solicitation (including plans and specs, if applicable) and any Amendments	
	3. Original Bidders list	
	 All Advertisements, and copies of any other published advertisements if other media is used, 	
	5. HUB Declaration	
	6. All vendor responses	
	7. Pre-response conference attendance log and notes	
	8. Notes on vendors from whom Best and Final Offers are requested	
	9. Best and Final Offer and vendor responses	
Pre-Award Phase	1. HUB Evaluation documents	
	2. Evaluation Committee Non-Disclosure Agreements, if applicable	
	3. Funding availability information	
	4. Bid, Performance and Payment Bonds, as applicable	
	 Required verifications - interested parties (1295), tax status, insurance, debarment, safety record, environmental compliance, etc. 	
	6. Pre-award conference summary, and list of attendees, if applicable	
Contract Award Phase	 Awarded contract (including Specifications, drawings or manuals incorporated into the contract by reference) and the notice of award document 	
	2. All contract Modifications	
	3. All agenda request(s)	
	4. Relevant HUB information for award	
	5. List of contractor's Required Documents	
	6. List of County-furnished property or services	
	7. All contractor data or report submittals	
Post Award Phase	Post-award conference summary, if applicable	
	2. All general correspondence related to the contract performance	
	3. All notices to proceed, to stop work, and to correct deficiencies	

	4.	Records or minutes of all meetings, both internal and external, including sign-in sheets and agendas
Close-Out Phase	1.	Substantial completion
	2.	Punch list
	3.	Release of claims
	4.	Warranty information

.

SECTION 3. HISTORICALLY UNDERUTILIZED BUSINESS (HUB) PROGRAM

3.001 HUB Certification

The County does not certify vendors as HUBs. Instead, it recognizes certifications by certain other entities.

Vendors who meet the criteria for being a HUB must obtain a certification as a HUB, M/WBE, or DBE from one of the following entities:

- a) The State of Texas,
- b) City of Austin,
- c) Texas Unified Certification Program (TUCP), or
- d) South Central Texas Regional Certification Agency (SCTRCA).

If a vendor has a certification, but not from one of these entities, it may request the Commissioners Court to approve its status as a HUB after showing that its certification is based on the following criteria:

- a) Vendor has not exceeded the size standards prescribed in Texas Administrative Code;³
- b) Vendor has its principal place of business in Texas; and
- c) Vendor is at least 51% owned by an Asian Pacific American, a Black American, an Hispanic American, a Native American, an American woman and/or a Service Disabled Veteran, who resides in Texas and actively participates in the control, operations, and management of the business.

Whenever a HUB is being considered for participation in a County contract, either as a Contractor or as a Subcontractor, HUB staff review the HUB's certification status to determine that the vendor's certification is currently valid.

If questions or issues arise about the status, HUB staff may report these findings to the appropriate certifying entity.

3.002 Definitions

In this section:

"Contractor" means anyone who provides Goods or services to the County through a contract and is paid for them directly by County.

"Declaration" means the form entitled HUB Program Declaration.

"PAR" means HUB Progress Assessment Reports which state the progress payments made to Subcontractors.

"Subcontractor" means anyone who provides Goods and services or discrete parts of them on behalf of a Contractor to meet the Contractor's contractual obligations to County and is paid by a Contractor who is paid directly by County. Subcontractors include all tiers of subcontracts (first, second, third) for both Goods and services.

"VTS" means the computer program known as the Vendor Tracking System used by County for tracking changes in Subcontractors, reporting payments, evaluating the HUB Program.

3.003 Commitment to HUB Participation

In seeking to obtain its aspirational goals, Purchasing staff:

- a) Encourage Departmental staff to use HUBs for purchases up to \$5,000, if any HUBs are available, and
- Use a systematic approach and centralized bidders lists to solicit quotes, bids, and proposals from both certified HUBs and non-

 $^{^3}$ 34 Texas Administrative Code §§20.282, 20.294 and 13 C.F.R. §121.201

HUBs for the award of Purchase Orders to the lowest respondent for purchases over \$5,000 and under \$50,000 for Goods and services not on existing contracts.

In competitive solicitations for construction, commodities, Chapter 2254 professional services, and all other services, the County makes a Good Faith Effort to solicit responses from HUBs and from Contractors who commit to subcontracting with HUBs in their responses for award of contracts.

3.004 Requirement of Honesty and Accuracy

Respondents must not knowingly or willfully provide incorrect information or make false representations in preparing or submitting their responses to a competitive solicitation.

Contractors must not knowingly or willfully provide incorrect information or make false representations in preparing or submitting their HUB Progress Assessment Report Form, entering information into the payment tracking system, in requesting the addition, deletion or substitution of a subcontract or responding to inquiries about compliance with any of the requirements in this section. These are very important requirements of the HUB Program.

3.005 Setting Project-Specific Goals

To identify opportunities for the participation of HUBs on County contracts estimated to cost over \$1 million, HUB staff establish project-specific goals that are narrowly tailored to the availability of ready, willing, and able HUBs in the relevant market area, when appropriate.

Before other Purchasing staff prepare a competitive solicitation, HUB staff examines the scope of work and determines how likely it is that a Subcontractor is able to provide some of the work or materials.

HUB staff research all available sources of the names and addresses of HUBs in the Metropolitan Statistical Area to determine how many may be available to provide work or materials. Sources include the Centralized Master Bidders List, City of Austin, TxDOT Texas Unified Certification Program, South Central Texas Regional Certification Agency, and the internet.

HUB staff also contact other community partners, local agencies and educational institutions for information about similar contracting and subcontracting opportunities.

HUB staff may establish these project-specific goals based on any or all of the following, if applicable:

- a) the subcontracting opportunities in the Specifications for the project;
- b) the dollar value of the subcontracting opportunities;
- the availability of at least three HUBs (in the County's Metropolitan Statistical Area) to perform the functions of those subcontracting opportunies in the individual relevant industry categories;
- d) customized availability estimates provided by the 2016 Disparity Study;
- e) the level of past utilization on County contracts;
 and
- f) any other relevant factors.

HUB staff may elect not to set goals for projects, when there are few to no subcontracting opportunities, fewer than three HUBs available to provide the Goods or services, or it is in the best interest of the County.

If HUB staff have established the value of a proposed contract to be between \$50,000 and \$1 million then HUB staff may use the annual aspirational goals on individual contracts, if appropriate.

3.006 HUB Requirements in Solicitation Process

If HUB staff establish a project-specific HUB goal for a contract, it is disclosed in the Declaration provided with the solicitation.

The Declaration also includes the subcontracting opportunities identified by HUB staff and reviewed for accuracy by the User Department.

The Respondent must complete and submit a Declaration that lists the proposed Subcontractors to be used in connection with the project.

Upon request, HUB staff provide a list of HUBs, to any Respondent experiencing difficulty locating HUBs to fulfill its subcontracting goals.

Before submitting a response, Respondents must notify HUBs that they are listing them on their Declarations.

A Respondent is required to satisfy the requirement to make a Good Faith Effort by being any one of the following:

- a) A self-performing HUB Respondent, or
- Any Respondent that meets or exceeds the overall HUB goal for subcontracts with HUBs, or
- c) Any Respondent proposing only HUBs to fulfill all subcontracting categories identified in the Declaration and substantially meeting the overall HUB goal by proposing HUB Subcontractors for 50% or more of the HUB goal, or
- d) Any Respondent who does not meet or substantially meet the overall HUB goal and has followed the Good Faith Effort Outreach Procedure, in subsection 3.007, including providing the evidence required.

HUB staff review Respondents' Declaration to determine compliance. If a Respondent's documentation is unclear and only minor clarification is needed, HUB Director may request the Respondent to clarify the statements or supplement the documentation provided with the response.

On selected projects, the Purchasing staff may perform a scope and price comparison of all Respondents to determine whether Respondents are soliciting and hiring Subcontractors in a non-discriminatory manner and whether HUBs are unreasonably inflating quotes.

Failure to meet one of these options or provide the required documentation may result in a determination that the response is non-responsive related to the HUB requirements for awarding the contract.

If HUB staff find that a Respondent did not make a Good Faith Effort, or otherwise meet the HUB and

documentation requirements, HUB staff communicates this finding to the Purchasing staff in charge of the solicitation. The Purchasing staff review all of the responses and forward them to the User Department for review and evaluation.

If the User Department recommends any Respondent that did not meet the goals or demonstrate Good Faith Efforts to meet the goals for contract award, it includes reasons for its recommendation. The Purchasing Agent presents the User Department's recommendation to the Commissioners Court.

The Commissioners Court may reject the response as non-responsive because it is not in compliance with HUB requirements, or may advise HUB Director of additional factors which warrant accepting the response as being in the best overall interest of the County.

If the solicitation includes a negotiated price or a negotiated scope of services, the Commissioners Court usually makes decision about whether to waive the HUB requirements for a particular Respondent before beginning negotiations.

The Commissioners Court may waive the HUB requirements if the court decides that it is in the County's overall best interest.

The Commissioners Court makes the decision about whether to approve the contract after negotiations are completed.

Throughout the solicitation process, HUB staff reach out to and assist HUB vendors by:

- Making construction plans and project manuals available to Contractors and trade associations in the market area;
- b) Attending pre-bid or pre-construction meetings, bid openings, and related events; and
- c) Providing technical assistance to HUBs and other Contractors especially about vendor registration, bidding opportunities, documenting Good Faith Efforts, preparing HUB Subcontracting Plans, and obtaining certifications, among other topics.

Respondents are encouraged to recommend obtaining HUB certification to potential non-HUB

certified Subcontractors who would be qualified to be certified.

3.007 Good Faith Effort Outreach Procedure

If a Respondent or a Contractor cannot meet or substantially meet the overall HUB goal, then the Respondent or Contractor shall follow the Good Faith Effort Outreach Procedure, including:

- (1) Sending a written notice to three (3) HUBs and to all community partners and plan rooms for each subcontracting opportunity listed in the Declaration. The written notice must include the following information:
 - (A) the scope of work,
 - (B) information about where to review plans and Specifications,
 - (C) bonding and insurance requirements,
 - (D) required qualifications, and
 - (E) a person to contact for additional information and to whom to submit a response.
- (2) Allowing at least seven (7) business days between the date the written notice is sent and the date by which the Respondent must submit its response. (Business days do not include Saturdays, Sundays, or County holidays. The day the notice is sent does not count as one of the 7 days.)
- (3) Giving fair consideration to any responses received from HUBs seeking a subcontract by:
 - (A) Seeking HUB participation even if it is the Respondent's or Contrator's usual practice to perform the entire contract itself, and
 - (B) Determining whether potential HUB Subcontractors are competitive with potential non-HUB Subcontractors on price, quality, and delivery.
- (4) Demonstrating that the Respondent or Contractor complied with the Good Faith Effort Outreach Procedures by providing copies of the written notices sent to HUBs, evidence of when

they were sent (e.g. printed fax confirmation, printed email), and copies of HUB responses.

In addition, if a Respondent or Contractor selects a non-HUB Subcontractor over a HUB Subcontractor for one or more of the identified subcontracting opportunities, Respondent or Contractor must also submit copies of the non-HUB subcontractor's quote upon request.

A higher quote need not be accepted just to meet the goal.

3.008 HUB Requirements After Contract Award: Changing Subcontractors

A successful Respondent's Declaration will be incorporated into its contract with the County. All representations and statements made in the Declaration are considered negotiated duties of the Contractor.

After contract award, HUB staff notify the Contractor and Subcontractors in the Declaration of the award through VTS.

For select federally-funded construction contracts, the Purchasing staff requires the Contractor to submit copies of all subcontracting agreements, including those with HUBs. The Subcontracting agreements must include a provision that a Contractor will pay its Subcontractors, (including suppliers) within 10 days of being paid. They must also contain a provision that requires the Subcontractors (including suppliers) to pay their second-tier Subcontractors (including suppliers) within 10 days after they are paid. The subcontracting agreements should also establish a process for resolving payment disputes.

Contractors must respond to County inquiries about HUB utilization made by any form of communication: including letters, emails, telephone calls, etc.

A Contractor cannot hire an additional Subcontractor or delete a HUB Subcontractor or change the scope in any contract with a Subcontractor listed in the Declaration attached to the contract without obtaining the written

approval of the Purchasing Agent or HUB Director before the new Subcontractor begins working.

Contractors must make all requests to substitute subcontractors listed in the Declaration to the HUB staff in writing and explain the reasons for the request through the Change form, as directed by the Declaration.

Acceptable reasons for requesting a substitution or termination of a Subcontractor include, but are not limited to:

- a) Subcontractor's failure to meet insurance, licensing, or bonding requirements;
- b) Subcontractor's failure to perform acceptably;
- c) Subcontractor's withdrawal of its offer;
- d) Termination of Subcontractor's business;
- e) Subcontractor's financial incapacity; or
- f) County changes to scope of work that reduce or eliminates the opportunity to use Subcontractors.

County prefers that substituted Subcontractors be a HUB.

If Contractor proposes to substitute or terminate a HUB Subcontractor, then Contractor must use the good faith efforts to provide opportunities for HUB participation, unless HUB goals are otherwise met. This may be demonstrated by substituting the HUB Subcontractor with another HUB Subcontractor.

If a non-HUB Subcontractor is to substitute for a HUB Subcontractor, then Contractor must demonstrate adherence to the Good Faith Effort Outreach Procedure in subsection 3.007.

Contractors that do not follow this procedure to change Subcontractors may be in default of their contract and subject to either HUB sanctions or termination of the contract or any other remedies available in law or in equity.

Contractors must not perform work themselves that they designate to be performed by a HUB

Subcontractor on the Declaration without prior approval.

A new or substituted Subcontractor is not allowed to begin working on the project until the HUB Director approves the addition or substitution.

Within seven (7) business days of receiving the HUB Program Change Form, the HUB Director will notify the Contractor and Subcontractor that the request is approved or denied. If the request is denied, HUB Director will provide the basis for the denial.

If additional time is needed, HUB Director or HUB staff will notify the parties in writing and provide the anticipated date for the decision.

3.009 HUB Requirements after Contract Award: Payments

Payment Requirements

Texas Prompt Pay Act⁴ requires the County to pay its Contractors within 30 days after receipt of the Goods or services under the contract, or receipt of an invoice for the Goods or service. This law also requires Contractors to pay their Subcontractors within 10 days after they are paid by the County.

If these payments are not made on time, the Contractors may be held in breach of the County contract.

If a Subcontractor has second- or third-tier Subcontractors, including suppliers, then that Subcontractor must also pay its Subcontractors or suppliers within 10 days of being paid by the Contractor.

Payment Reporting Requirements

All Contractors who have disclosed subcontracting opportunities in their Declaration must prepare and submit PARs with copies of applicable invoices attached.

In addition in the PARs, Contractors must attest to the following:

⁴ Texas Government Code, chapter 2251

- a) Contractor has received all invoices from Subcontractors for the current payment period;
- b) Contractor will pay its Subcontractors within ten (10) days of receiving payment from the County;
- c) Contractor will require its Subcontractors to pay their Subcontractors within ten (10) days of receiving payment from Contractor;
- d) The PAR for the current payment period is complete and the information in it including the payment date stated, is accurate; and
- e) Contractor acknowledges that misrepresenting any information in its PAR is a breach of its contract with County, and the County has the right to terminate the contract or seek other remedies.

To ensure compliance with the Texas Prompt Pay Act and to evaluate the effectiveness of the HUB Program, the County uses VTS to track the payments made to Subcontractors.

For all contracts with Subcontractors, HUB staff report the following information through VTS each month in which Contractor requests a payment:

- a) The identity and the full amount paid to each Subcontractor, both HUB and non-HUB with whom the Contractor has a contract for supplies, materials, services or equipment.
- b) The percentage of work under the contract that has been performed, and
- c) The portion of that work that was performed by each of the following: Contractor, non-HUB Subcontractors, and HUB Subcontractors.

All Subcontractors are required to confirm the information reported about them in response to a) and b).

The County may withhold payments or suspend work if the Contractor does not submit a properly completed PAR.

HUB staff verify payments to Subcontractors through VTS and prepare reports about subcontracting payments made to HUBs by purchasing categories.

In determining whether the County is meeting its aspirational goals, the County tracks the payments made to HUBs. If the Contractor is not a HUB, then the County tracks only the portions of the payments made to the HUB Subcontractor(s).

HUB Director may discuss and document the Contractor's performance of these requirements in the Purchasing master file. If any deficiencies are identified, Contractor must correct them before receiving the payment.

3.010 Non-Compliance and Sanctions

Contractors must comply with all requirements of the HUB Program stated in section 3.

Purchasing staff may audit contract compliance and investigate reports of non-compliance to determine whether corrective actions are needed. They may also recommend sanctions when reporting to the Purchasing Agent, if appropriate.

Non-compliance Notice

Before the Purchasing Agent imposes any sanction, Purchasing Staff notify both the Contractor and the Purchasing Agent of any non-compliance issues. The notices state the nature and extent of the non-compliance issues, any relevant circumstances, whether a sanction is being considered, and the factors relevant to imposing and selecting a sanction.

Purchasing staff may consider the following factors when recommending sanctions to the Purchasing Agent:

- The type of and seriousness of the noncompliance;
- b) Whether the non-compliance is willful, knowing, negligent, an intentional omission or an oversight;
- c) Steps taken to correct the non-compliance;
- d) The existence of falsification, misrepresentation, or withholding information; and

e) The number and frequency of acts or omissions resulting in non-compliance within the previous 24-month period.

If the non-compliance includes more than one type of action or inaction at any time, Purchasing staff may recommend whether to consider the noncompliance as a single instance or separate instances.

Sanctions for non-compliance

Based on the circumstances and these factors, sanctions may include one or more of the following:

- Admonishment letters demanding correction of the non-compliance from the Purchasing Agent or the County Attorney's Office.
- b) Demands to the Surety Company for performance (if applicable and approved by Commissioners Court).
- c) Notice of breach of contract, demanding correction of the noncompliance or exercising other remedies for breach, including HUB sanctions, termination of the contract, and damages.
- d) Notice that due to non-compliance with HUB Requirements, Contractor is deemed "nonresponsible" for future contract awards for a specified length of time. The following schedule represents the length of time recommended after a final written decision imposing nonresponsibility sanctions on a Contractor in a rolling 24-month period:
 - (1) Up to 6 months for Contractor's first non-responsibility sanction;
 - (2) Up to 1 year for Contractor's second nonresponsibility sanction; and
 - (3) Up to 3 years for Contractor's third non-responsibility sanction.

3.011 Response to Non-Compliance Notice and Appeal

If Purchasing staff notify a Contractor of Noncompliance issues and a Contractor does not agree with any information presented in it, the Contractor may provide a written response.

When any response to a Non-Compliance Notice or any part of it is received, the Purchasing Agent must follow the procedures in this section 3.011 and the Declaration in the solicitation to assess the merits of the notice and the response of the Contractor to avoid or correct any erroneous decisions.

The procedures to respond to the Non-Compliance Notice follow.

Response to Non-Compliance Notice:

The County does not accept responses until after the Non-Compliance Notice has been sent to the Purchasing Agent.

Any Contractor may make a written response about the Non-Compliance Notice to Travis County Purchasing Office, Attn: Purchasing Agent, at the address shown on the contract. The written response must be actually received before 5:00 p.m. of the FIFTH business day after the date of the report.

If the Purchasing Office receives a response after 5:00 p.m., it considers the response as received on the next business day.

If the Purchasing Office receives a response after the response period ends, Purchasing staff send a written reply signed by the Purchasing Agent to the responding Contractor stating that the response is denied because it was not received within the time limits. Purchasing staff send this reply as soon as reasonably practical.

The written response must include:

- a) A complete statement of the reasons and facts for the response,
- b) References to the applicable specific portions of all activities and documents that support Contractor's viewpoint, and
- c) The name, address, e-mail address, and telephone number of the person representing the responding Contractor.

Upon receipt of the written response, the Purchasing Agent reviews and evaluates the Non-

Compliance Notice and the written response and prepares a written decision.

At her discretion the Purchasing Agent may investigate the response, obtain additional information, and provide an opportunity to resolve the response by mutual agreement, or schedule one or more meetings with the representative of the responding Contractor.

After considering the Non-compliance Notice and the Contractor's written response, if any, the Purchasing Agent must issue a written decision within TEN business days after the date of the Non-Compliance Notice. The written decision must state its date of issuance.

Purchasing staff send the written decision to the responding Contractor by e-mail or by US mail to the address stated in the response. The decision informs the responding Contractor how the issues and the response have been resolved, including whether sanctions are being imposed. Purchasing staff provide a copy of the decision to the responding Contractor.

Appeal:

The Contractor may appeal the Purchasing Agent's written decision in writing to Commissioners Court if it is not satisfied with the decision.

The written appeal must actually be received at the Travis County Purchasing Office, Attn: Purchasing Agent at the address shown on the contract before 5:00 p.m. of the TENTH business day after the date of issuance of the Purchasing Agent's decision—not the date the responding Contractor receives it.

The written appeal must specify the written decision being appealed and all facts and circumstances that support the appeal.

The appeal of the Written Decision is limited to the grounds raised in the original response to the Non-Compliance Notice. An appealing Contractor is prohibited from stating new reasons in its appeal.

If Purchasing staff receive an appeal after 5:00 p.m., it considers the appeal as received on the next business day. If the Purchasing Office receives an appeal after the appeal period ends, Purchasing staff

send a written response signed by the Purchasing Agent to the appealing Contractor stating that the appeal is denied because it was not received timely. Purchasing staff send this response as soon as reasonably practical.

The Purchasing Agent must submit the written appeal to the County Judge with a request to add it as an appropriate Item on the Commissioners Court's agenda within a reasonable time *usually no later* than the third regular meeting (voting session) of the Commissioners Court held after the Purchasing Office receives the appeal.

Purchasing staff notify the appealing Contractor of the date, time, and place that the Commissioners Court is to consider the appeal for final resolution. At that time, the Contractor has an opportunity to present evidence in support of its appeal. The Purchasing Agent may also make a presentation.

The Commissioners Court overturns the written decision only if it determines that the Purchasing Agent made a material error in determining the facts or following the procedural requirements in this section.

In reviewing an appeal, the Commissioners Court only reviews the written appeal, and the written decision of the Purchasing Agent. The Commissioners Court decides whether to uphold or overturn the Purchasing Agent's written decision.

The Commissioners Court sends a written decision on the appeal by e-mail or by US mail to the appealing Contractor at the address stated in the appeal within ten (10) business days after consideration of the appeal. The written decision includes the reasons for the decision and specifies any resulting sanctions.

The decision of the Commissioners Court exhausts all of the administrative remedies available to the appealing Contractor.

The procedures and time limits in this section are mandatory and are the sole and exclusive remedy of each Respondent or contractor if there is a response or appeal.

A failure by the Contractor to timely complete both the response procedures and the appeal procedures is deemed a failure to exhaust administrative remedies. Failure to exhaust all administrative remedies, or failure to comply with these procedures constitutes a waiver of any right to further pursue the response, including legal proceedings.

3.012 Advisor Apprentice Program

The Purchasing Office maintains the "Travis County Advisor-Apprentice Program" (TCAAP), a voluntary mentor-protégé program to foster long-term relationships between Contractors and HUBs. The objective of TCAAP is to provide professional guidance and support to apprentices to facilitate their development and growth.

TCAAP features remain flexible to maximize participation but include:

- a) An application process which identifies the eligibility and selection criteria for businesses, including HUBs, to be Advisors and for potential subcontractors to be Apprentices;
- b) Objectives that address the roles and expectations of the County, the Advisor and the Apprentice;
- Recruitment of Advisors and Apprentices to voluntarily participate in TCAAP;
- d) Identification of the needs of Apprentices who request to be mentored;
- e) Inclusion of key County resources, including County Executives, senior managers and Purchasing staff, to assist with the implementation of TCAAP;
- f) Partnerships with local governments and nonfor-profits to run a community based Advisor-Apprentice Program; and
- g) Assessment of the effectiveness of TCAAP by conducting periodic surveys/interviews of both Advisors and Apprentices, and monitoring the progress of the Advisor-Apprentice relationship;

The County may implement Advisor-Apprentice Programs on its own or cooperatively with other local governments, agencies, or private organizations that have skills, resources and experience in these programs focused on the critical areas of the County's purchasing categories: including Construction; Commodities; Chapter 2254 Professional Services; and all other services.

3.013 Outreach Efforts Encouraging Vendor Use of HUB Subcontractors

The HUB staff sponsor forums to educate the business community on the logistics of doing business with the County including:

- a) Presenting HUB Program requirements at presolicitation conferences, and the use of Good Faith Efforts to include HUB Subcontractors in their responses.
- b) Conducting workshops, seminars, and webinars explaining the HUB Program to potential vendors and encouraging participation in the program.

The HUB staff also hosts forums, in which HUBs have the opportunity to present to County staff and other vendors about their businesses and technical skills. These presentations provide HUBs with greater visibility in the community.

3.014 Internal Outreach Efforts

The HUB staff actively seek participation in and understanding of the HUB Program by User Departments with the intent to foster continuous commitment and accountability of departmental leadership and stakeholders.

HUB staff aims to educate User Departments about the HUB Program's goals and collaborate with User Departments to increase the effectiveness of the program.

The HUB staff assist User Departments in evaluating their purchasing needs annually and developing the scopes of work for their projects to increase opportunities for HUB participation, where feasible.

The HUB staff may also assist User Departments to identify qualified HUBs for projects.

3.015 Re-Evaluation of HUB Program

On a semi-annual basis, the HUB Director reviews the County's progress toward achieving its aspirational goals and submits a report with recommendations to the Commissioners Court, taking into consideration whether race- and gender-conscious remedies continue to be necessary to meet the current goals.

Before the Commissioners Court reauthorizes the HUB Program, the Commissioners Court must review it and verify its necessity and tailor it to the specific conditions found in the County's marketplace at that time. The HUB Program should

only be continued if there is strong evidence that discrimination continues to put HUBs at a disadvantage in this Metropolitan Statistical Area.

This section expires at 5:00 p.m. on December 31, 2021, unless the Commissioners Court has reauthorized the HUB Program before that time and date.

The County may review the evidentiary basis for the HUB Program by obtaining a disparity study and may adopt new goals based on the availability of HUB businesses identified in the disparity study.

SECTION 4. SHOPPING CART PROCEDURES

4.001 Overview

The User Department's Shopping Cart requests the Purchasing Office to enter into a contract with a vendor to purchase Goods or services. Shopping Carts are for internal use only and cannot be used to order anything directly from a vendor.

4.002 Procedure

The User Department should research all information about the purchase **before** it enters a Shopping Cart.

The User Department should include a complete description of what the Department wants to buy, when it is required, and where the Goods are to be delivered or the services are to be performed.

- a) In Shopping Carts for Goods or services available on existing contracts, SAP assists the Department and "builds" their description from the appropriate pre-loaded contract.
- For Shopping Carts for Goods or services not available on existing contracts, the User Department must complete the description in the Shopping Cart itself.

After the Purchasing Office receives a Shopping Cart, Purchasing staff select the appropriate purchasing method based on the cost of the purchase, the Goods and services to be purchased, the existing contracts for Goods and services and other relevant factors.

For specific instructions about entering Shopping Carts into SAP, the User Department Employees can contact the SAP Support Team in the Auditor's Office for training.

4.003 Processing Times for Types of Shopping

The time for Purchasing staff to process a Shopping Cart starts when a properly prepared Shopping Cart has departmental financial approval and oversight review is completed, if applicable, and concludes when a purchase order is placed with a vendor. Please note this does not include any time needed by a User Department to correct budget line item accounts or Product Category Codes, or similar details and does not include the time required for delivery.

The 5 Types of Shopping Carts

There are five types of Shopping Carts for routine purchases based on the type of action and the processing time required for the purchase:

- a) Contract for Goods or services ordered from existing contracts loaded in SAP. SAP processes most Shopping Carts for Goods or services ordered from an existing contract automatically immediately after departmental financial approval.
- b) Routine for amounts under \$5,000 not ordered from existing contracts. User Department staff submit the suggested vendor (preferably a HUB) as the source of their budgetary estimate in these Shopping Carts. To the maximum extent practical, Purchasing staff select the vendor the User Department submitted as the source of the budgetary estimate for purchases up to \$5,000. Purchasing staff process most Shopping Carts for Goods or services not ordered from existing contracts within 1 to 2 weeks after department financial approval.
- c) Routine for amounts over \$5,000 and under \$50,000 not ordered from existing contracts. Whenever reasonable and practical, the Purchasing staff solicit all vendors in Highway District 14 on the Centralized Master Bidders List, identified by using the appropriate National Institute of Government Purchasing's Commodity Code, and using the Quick Quote process via BidSync. Purchasing staff process most Shopping Carts for Goods or services not ordered from existing contracts within 2 to 4 weeks after department financial approval.

- d) Expedited for Goods or services not ordered from an existing contract if the Goods or services are needed sooner than available using routine Shopping Carts to avoid work stoppage, or significant additional costs of operations.
 - (1) The User Department provides comments requesting expedited processing in the Shopping Cart, and telephones or e-mails to alert Purchasing staff about the request for expediting.
 - (2) If additional actions are needed, Purchasing staff advise the User Department what other actions to take. This method should not be used unless absolutely necessary because it interrupts the processing of routine Shopping Carts.
 - (3) Expedited Shopping Carts are subject to all applicable legal requirements for County purchasing. For purchases under \$50,000, Purchasing staff process expedited Shopping Carts within 1 to 3 working days after Department financial approval. Expedited purchases over \$50,000 are processed as Emergency Purchases, if appropriate.
- e) Emergency for Goods or services not ordered from an existing contract if the Goods or services are needed to protect the safety of persons or property due to unanticipated conditions and the estimated cost is over \$50,000. (Shopping Carts for Goods or services meeting this condition for under \$50,000 are processed as expedited Shopping Carts.)
 - (1) The User Department may either provide an e-mailed written memorandum or enter a Shopping Cart for emergency purchases expected to be over \$50,000.
 - (2) The User Department telephones Purchasing staff immediately after forwarding an emergency purchase request. The Department head or the County Executive of the User Department must provide written documentation about the danger.
 - (3) Purchasing Office staff determines if the needed Goods or services can be purchased

- legally from any source that does not require a competitive solicitation or an order of the Commissioners Court. If not, Purchasing Office staff advise the User Department what other actions it must take. The processing time for these purchases depends on factors discussed in Section 9. Over and Under \$50,000: Special Circumstances—Emergencies.
- (4) This method should not be used unless absolutely necessary.

4.004 Special Purpose: Shopping Carts for Goods or Services from State Contracts

TPASS Contracts

To initiate a Purchase Order to TPASS, the User Department submits a Shopping Cart. Purchasing staff determines whether or not the requested Goods or services are available from TPASS contracts and whether it is in the best interest of the County to procure the Goods or services without issuing a competitive solicitation. If Goods and services are available, the Purchasing staff assign a state requisition number that is used for reporting and payments.

TXMAS Contracts

- a) To purchase from a TXMAS contract that has been loaded in SAP, the User Department submits a contract Shopping Cart.
- b) To initiate a new TXMAS purchase, the User Department may research Goods and services on the TPASS website to determine if the Goods or services are available from TXMAS. Based on its research, the User Department submits a Shopping Cart and states in the comments that the Good or service may be available through TXMAS.
- c) The Purchasing staff verify whether or not the requested Goods or services are available from TXMAS and compares prices among TXMAS vendors to obtain information for determining the Best Value. The Purchasing staff work with the User Department to determine Best Value

and then issues a Purchase Order directly to the selected vendor providing the Best Value.

DIR Contracts

- a) To initiate a DIR purchase, the User Department may research Goods and services on the DIR website to determine if the goods or services are available from DIR or its contractors. Based on its research, the User Department submits a Shopping Cart and states in the comments that the Good or service may be available from DIR.
- b) The Purchasing staff determines whether or not the requested Goods or services are available from DIR and whether it is in the best interest of the County to procure the Goods or services without issuing a competitive solicitation.
- c) If available and in the County's best interest, the Purchasing staff compare prices among DIR vendors to obtain the Best Value. The Purchasing staff work with User Department to determine Best Value and issues a Purchase Order directly to the selected vendor providing the Best Value.
- d) For larger, more complex IT purchases, the Purchasing Office works with the County Attorney's Office to prepare a supplemental contract to ensure that they achieve the best interests of the County.
- e) The User Department should plan its purchases to allow sufficient time to strictly comply with the procedures in this section.
- f) If the purchase is from a vendor who is part of the GoDIRect program, the Purchasing staff issue the Purchase Order directly to the vendor and pays the vendor directly.
- g) If the purchase is to a vendor that is not part of the GoDIRect program, the Purchasing staff issue the Purchase Order to DIR, which authorizes a separate Purchase Order to the vendor.

4.005 Special Purpose: Shopping Carts for Goods or Services from Cooperative Purchasing Agreements

To initiate a purchase from a cooperative purchasing program, the User Department may research Goods and services on the approved cooperative's website to determine if the needed Goods or services are available from the cooperative.

- a) Based on its research, the User Department submits a Shopping Cart and identifies in the comments which cooperative purchasing program offers the Good or service.
- b) The Purchasing staff verify whether or not the requested Goods or services are available from that program.

If available, the Purchasing staff compare prices among cooperatives and local vendors to obtain information to determine the Best Value and works with the User Department to determine which vender offers the Best Value.

The Purchasing staff then follow the procedure for purchasing in that program's interlocal agreement.

4.006 Special Purpose: Shopping Carts for Equipment Leases or Maintenance Contracts

The User Department enters a Shopping Cart that identifies the purchase as either a lease or maintenance contract. The Shopping Cart should include:

- 1. The budget line item account,
- 2. The serial number,
- 3. The model number,
- 4. The physical location of the equipment, and
- 5. The beginning and end dates of the lease or maintenance contract and the renewal period.

In addition, if the Lease or maintenance contract sought is available from an authorized state contract or cooperative agreement vendor, the Shopping Cart should include:

- 1. The Vendor ID number,
- 2. The part number,

- 3. The class and item number, and
- 4. The name of the contact person.

For renewals, either the original County contract number or the state term contract number should be identified in the Shopping Cart.

If the request is for a new sole source lease or maintenance contract, the User Department must add comments or an attachment to the Shopping Cart justifying why it qualifies as a sole source purchase.

4.007 Special Purpose: Shopping Carts for Equipment with a Trade-In

The User Department enters a Shopping Cart that identifies the purchase of equipment with the offer to trade-in equipment of the same general type. The Shopping Cart should include the following description of the equipment to be traded-in:

- a) The asset tag number,
- 5. The serial number,
- 6. The model number,
- 7. The general appearance of the equipment, and
- 8. The physical location of the equipment.

4.008 Exception to Shopping Cart Procedures: Requests for Payment (FV60)

The Auditor's Office processes payment following the FV60 Request for Payment (Direct Payment) procedures in SAP without a Shopping Cart. The following Goods and services are processed as Requests for Payment:

- a) Utilities
- b) Risk Management Liability
- c) Appraisal District Fees
- d) Notary Fees
- e) Interest on Judgements
- f) Court-related fees and court ordered services
- g) Indigent assistance:
 - (1) Rent/utilities, etc. (CABA)
 - (2) Court-appointed attorneys civil/criminal
 - (3) Vehicle emissions repair/replace (LIRAP)
- h) Medical Services for Juvenile and Adult offenders
- i) Law Books
- j) Subscriptions and Publications
- k) On-line classes for training
- Certifications and Memberships
- m) Licenses and permits
- n) Refunds
- Reimbursements to Employees if the Employee includes written documentation of the purchase with the request and the Purchasing Agent approves the purchase. (This applies to purchases of applications for smart devices, but does not apply to travel or training purchases.)
- p) Foster Parent Reimbursement
- q) Amounts paid from balance sheet accounts (commitment items 2XXXXX).

SECTION 5. PURCHASING CARDS

5.001 Purchasing Cards for User Departments

P-cards facilitate the purchase of Items that User Departments can purchase most efficiently through online resources. In addition, Employees whose position requires them to travel on short notice or respond to emergency events may have access to funds if they use P-cards.

P-cards for Goods and services for short notice response and emergency response are subject to policies that are specific to the User Department which experiences these needs.

The Purchasing Agent and such a User Department develop policies and procedures cooperatively to:

- a) identify the Employees who are permitted to use P-cards,
- b) define the limits of their use in purchasing Items,
- c) implement reporting and record keeping procedures for use of the P-card, and
- d) provide all necessary safeguards on the security and appropriateness of the use of the P-cards.

When developed, the Commissioners Court must approve the policies before the User Department implements the P-card Program.

5.002 P-card Use During EOC Activation

P-card use provides County with a way to facilitate the purchase of items in support of the Emergency Operations Center (EOC) during activation for disaster response. The Purchasing Agent may temporarily waive the restrictions related to one or more of the items listed in 5.006 during an activation of the EOC if needed to appropriately respond to the disaster. Then Purchasing Office employees may be authorized to utilize P-Cards for these goods and services.

All purchases comply with the reporting and record keeping procedures related to the use of P-Cards and other requirements and limits on their use in this Section.

5.003 Procedures for P-card Use in Purchasing Office

P-card use provides County with a way to purchase from vendors who do not accept Purchase Orders, to provide a quicker turnaround of requests for low-dollar-value items, and to reduce paperwork and handling costs. Payments to vendors are made via the P-card settlement system. County makes monthly settlements with the P-card Issuer.

The remainder of this section may be referred to as the Purchasing Office P-Card Policies and Procedures.

5.004 Definitions

In this section:

"Administrator" means the Employee of the Purchasing Agent who administers the P-Card Policies and Procedures and regularly reviews the use of each P-card that has been issued, certifies a Cardholder's Statement, and enforces the P-card policies and procedures whenever there is any noncompliant use.

"Cardholder" means an Employee of the Purchasing Agent who:

- a) Has been selected by the Purchasing Agent as honest, reliable, and likely to need to purchase Items not on solicited contracts,
- b) Has signed an Employee P-card Agreement,
- c) Has been issued a P-card, and
- d) Is authorized to use that P-card only to make purchases in strict compliance with the P-Card Policies and Procedures.

"P-card" means a card issued by the P-card Issuer to a Cardholder which allows the Cardholder to purchase Items on credit within the limits authorized by the P-card Issuer as directed by the Purchasing Agent.

"P-card Issuer" means the financial institution that provides P-cards upon submission of a properly completed Enrollment/Request Form, authorizes the Single Purchase Limit and the overall monthly limit requested by the Purchasing Agent in that form, provides Statements and directly pays the vendors.

"Purchasing Log" means a list of Items purchased using a specific P-card including the description of the Item, the name of the vendor and other relevant information that is maintained by each Cardholder.

"Single Purchase Limit" means the maximum allowable value of a transaction authorized for a specific Cardholder on a specific P-card that is assigned by the P-card Issuer based on the instructions of the Administrator, which may vary from P-card to P-card but which shall not exceed \$5,000 for any Cardholder on a specific P-card.

"Statement" means the monthly listing of all transactions made using the P-card, which the P-card Issuer prepares and distributes directly to the Cardholder by the P-card Issuer.

"Transaction Limit" means the maximum allowable number of transactions authorized for a specific Cardholder on a specific P-card during a single month, which shall not exceed 40 transactions for any for any Cardholder on a specific P-card or account.

"Unauthorized Purchase" means a purchase that does not comply with the P-Card Issuing Agreement and/or the P-Card Policies and Procedures.

5.005 Applying for a P-card

a) The Administrator may propose Employees of the Purchasing Office to be Cardholders by submitting a properly completed but unsigned Purchasing Office Request Form to the Purchasing Agent.

- (1) The Purchasing Agent determines whether the Employee is an appropriate person to be issued a P-card based on the requirements in the P-Card Policies and Procedures.
- (2) The Purchasing Agent determines and indicates the Single Purchase Limit, the Transaction limit, and overall monthly limit authorized for that Employee on the Purchasing Office Request Form.
- (3) The Purchasing Agent approves submission of the information required by the P-card Issuer's online Enrollment process form to the P-card Issuer after the Employee complies with all procedures to obtain a card.
- b) The Administrator gives the approved Employee a copy of the P-card Policies and Procedures.
- c) To obtain a P-card, the Employee must complete all of the following:
 - (1) Read the P-card Policies and Procedures.
 - (2) Read and sign a properly completed Employee P-card Agreement which states that the Employee understands the P-Card Policies and Procedures and the responsibilities of a Cardholder; and
 - (3) Sign the previously submitted Purchasing Office Request Form and complete submit the P-Card Issuer's online Enrollment process which contains all information required to be issued a P-Card.
- d) After an Employee complies with all procedures to obtain a card, the P-card Issuer provides the P-card to the Cardholder. The unique card that the Cardholder receives directly from the P-card Issuer has his or her name embossed on it and ONLY the Cardholder is authorized to use it.
 - (1) The Cardholder shall not allow any other person to use that card or account number.
 - (2) The Cardholder is liable for all use of the card and account number.
- e) The Administrator or designee maintains all records related to P-card requests, authorized limits, Cardholder transfers, and information about lost, stolen, and destroyed P-cards. The Administrator also notifies the P-card Issuer of

all P-card requests, authorized limits, Cardholder transfers, and information about lost, stolen, and destroyed P-cards.

5.006 Requirements for Purchasing with a P-card

The Cardholder may make purchasing transactions on behalf of County with the approval of the Administrator.

The Cardholder must limit use of the P-card to the following conditions:

- a) The Cardholder must not make purchases where the value of the transaction exceeds the Single Purchase Limits.
- b) The Cardholder must not split payment for a purchase into multiple transactions to stay within the Single Purchase Limit.
- c) The Cardholder must not purchase any "over the counter" Items unless the Items are immediately available at time of P-card use.
- d) The Cardholder must not use the P-card to purchase any back-ordered merchandise.
- e) The Cardholder must not exceed the number of transactions or the dollar limits of authorized transactions.

Unless temporarily specifically waived by the Purchasing Agent during activation of the Emergency Operations Center, the Cardholder must not use the P-card for the following:

- a) Personal purchases or purchases for family members or friends;
- b) Identification;
- Entertainment expenses or meals or lodging, rental car, airfare or other travel expenses;
- d) Cash advances or money orders;
- e) Telephone calls or monthly service for any utility;
- f) Gasoline, oil, or other automotive supplies;
- g) Alcoholic Beverages or tobacco products; or
- h) Any additional Items that may be restricted by other Travis County policy.

If a Cardholder makes any unauthorized purchases or uses the P-card in any unauthorized manner, the Cardholder shall pay County for the total dollar amount of these unauthorized uses and purchases plus any administrative fees charged by the P-card Issuer and any other costs associated with the unauthorized use.

The Cardholder is also subject to disciplinary action for unauthorized use, the severity of which will be consistent with the seriousness of the unauthorized used and which may include termination of employment.

Before making any purchase, the Cardholder determines if the Item is available under a County contract and whether the contract establishes an exclusive provider relationship. If the contract does establish an exclusive provider relationship, the Cardholder must not purchase the Item using the P-card. If the Item is available under a County contract that does not establish an exclusive provider relationship for the Item, the Cardholder must not purchase it with the P-card unless the P-card transaction would result in better quality at a better price and would provide Travis County with the Best Value, and the reasons for this are documented on the Purchase Order.

Before making any purchase, the Cardholder shall process a request for a Purchase Order to the vendor that includes all generally required information, such as the appropriate expenditure account, that references the P-card Issuer and P-card clearing account in the Purchase Order as the account code and that estimates the amount expected to be purchased using the P-card. To verify funds availability, a Purchase Order is issued but not submitted to the vendor.

If the Items are not available on a County contract and their value is \$5,000 or less, the Cardholder may purchase Items from a vendor without comparing sources or competition between vendors in compliance with the P-Card Policies and Procedures.

If vendors furnish a standing price quotation or catalog price on a recurring basis, the Cardholder must verify that the price listed is current. When a vendor confirms that the Item is available and meets the Specification and delivery requirements, the Cardholder confirms that the vendor accepts the P-card and that sales taxes are not payable on the Item purchased or charged to the transaction.

Method of P-Purchases

When the Cardholder makes an "over the counter" purchase, the Cardholder makes certain that the vendor lists the quantity and fully describes the Item(s) on the P-card receipt. The Cardholder documents the transaction in the Purchasing Log.

When the Cardholder makes a purchase by telephone, the Cardholder shall request that vendor provide an emailed order confirmation and paid transaction receipt, if applicable, to the Cardholder and document the transaction on the Purchasing Log and retain the emailed confirmation or receipt and all shipping documentation.

When the Cardholder makes a purchase *over the Internet*, the Cardholder documents the transaction on the Purchasing Log and retains purchase confirmation and all shipping documentation, if applicable.

Shipment & Delivery

If the Item is to be shipped, the Cardholder directs the vendor to include the following information on the packing list or shipping label:

- a) Cardholder's name and telephone number,
- b) Complete delivery address, and
- c) The vendor's order number.

The Cardholder advises the Purchasing Office receptionist who receives deliveries about the expected delivery of ordered Items, including the vendor's name, the order number, the anticipated delivery date, the number of boxes expected, and the carrier (UPS, Fed Ex, etc.).

The receptionist notifies the Cardholder when delivery is made so that the Cardholder can retain proper documentation. The vendor must deliver all purchases to the Cardholder ordering the Item to ensure that the documents necessary for record keeping are readily available to the Cardholder.

5.007 P-card Returns

If Items purchased with a P-card are unacceptable because the wrong Item is received, the Item received is not satisfactory, or is damaged or defective, or is a duplicate order, the Cardholder should contact the vendor to explain the problem. The Cardholder obtains replacement or correction of the Item or inquires about return policies within one business day after the problem is discovered. Immediate action to resolve the problem is of extreme importance.

If the vendor has not replaced or corrected the Item by the date the Cardholder receives his or her Statement, the Cardholder considers the purchase of the Item in dispute.

Disputing a Charge

If the Cardholder is disputing a charge, he or she shall:

- a) Contact the vendor to negotiate an appropriate resolution.
- b) If contacting the vendor does not resolve the problem, complete a Dispute Report and submit it to the P-card Issuer's representative with copies of the Dispute Report to the Administrator and Auditor.
- c) If an Item has been returned, the Cardholder requests a credit voucher. If the Cardholder receives a credit voucher, the Cardholder verifies that the Statement reflects the credit.
- d) The Cardholder must not accept a cash refund under any circumstances.

The Cardholder maintains a list of all disputed Items that have not been resolved and prepares a monthly report noting the Items from previous months.

5.008 P-card Holder Recordkeeping

For each P-card transaction, the Cardholder retains documentation to verify the purchases listed on the Cardholder's Statement.

The Cardholder continually maintains the Cardholder's Purchasing Log and includes all

pertinent information about each and every P-card purchase legibly in it.

- a) When the Cardholder makes an "over the counter" purchase, the Cardholder retains the invoice and "customer" copy of the P-card receipt.
- b) When the Cardholder makes a purchase by telephone, the Cardholder documents the transaction on the Purchasing Log and retains all shipping documentation.

The Cardholder sends a copy of the Purchasing Log for the period covered by the Statement with the Cardholder's Statement to the Administrator within five (5) days after receipt of the Statement each month.

If the Statement does not list the purchased Items or credits, the Cardholder retains the applicable transaction documentation until the next Statement. If the purchase Item or credit does not appear on the next Statement or the second following billing cycle Statement, the Cardholder notifies the Administrator and the Purchasing Agent.

5.009 Review of Monthly P-Card Statement

When the Cardholder receives the Statement from the P-card Issuer at the end of each billing cycle, the Statement should list the Cardholder's P-card transactions for that period. The Cardholder checks each transaction on the Statement against his or her Purchasing Log, receipts and any shipping documents to verify the Statement and note any discrepancies.

Upon receipt of the Statement from the P-card Issuer, the Cardholder writes the applicable Purchase Order number next to the corresponding line Item on the Statement, and sends a copy of the Statement with the charges and the certified original Purchasing Log to the Auditor for payment processing.

The Cardholder carefully matches complete supporting documents to the Purchasing Log and then to the Statement.

- a) The Cardholder neatly attaches the applicable original sales documents (Purchase Order, invoice, cash register tape, P-card slips, etc.) for all Items on the Statement to it and the Purchasing Log in the order the transactions are listed in the Purchasing Log to facilitate audit substantiation.
- b) If the Cardholder does not comply with this procedure within 5 days of receipt of the statement, the administrator revokes the Cardholder's authority to use the P-card.

If the Cardholder does not have documentation of a transaction on the Statement, he or she attaches a certified statement that includes a description of the Items purchased, date of purchase, vendor's name, and the reason for lack of supporting documentation.

If there are any discrepancies, the Cardholder lists the transactions incorrectly billed and shows that the Item has been disputed.

The Cardholder signs the Statement, and presents the Statement and supporting documentation to the Administrator for review. The Cardholder presents the list of Cardholder's disputed Items to the Administrator.

The Administrator maintains a master list of all unresolved disputed Items on Statements.

Within one business day of receipt from the Cardholder, the Administrator forwards the original signed and approved Statements and copies of supporting documentation to the Purchasing Agent for review, approval, and signature.

To minimize the risk of late charges and fees, within three calendar days after receipt of the Statement and supporting documentation, the Purchasing Agent checks the Cardholder's Statement and Purchasing Log and confirm at least the following:

- a) Receipts and shipping documents exist for each purchase.
- b) The goods were received or the services were performed.

 The Cardholder has complied with applicable procedures, including these P-card policies and procedures.

The Purchasing Agent returns the certified Statements and supporting documentation to the Administrator within three calendar days of initial receipt.

If the Purchasing Agent discovers missing documentation, failure to comply with the P-Card Policies and Procedures, failure to comply with any Purchasing policies and procedures, or other discrepancies or issues; the Purchasing Agent immediately notifies the Administrator to investigate the discrepancies. If there are no discrepancies or issues, the Purchasing Agent signs and approves the Cardholder's Statement for submission to the Auditor for payment.

The Purchasing Agent's approval and signature on a Cardholder's Statement indicates that the Cardholder was authorized to make the purchases listed on the Statement and that those purchases were made in compliance with the applicable procedures.

The Administrator shall retain the Statements, original receipts, and supporting documentation for County files for at least four years, and make those records available for audit upon request.

5.010 Monthly Statement Summaries

The contract with the P-card Issuer shall require the P-card Issuer to provide monthly Statement Summaries listing all transactions of all Cardholders to the Administrator. These summaries allow the Administrator to track each Cardholder's activities. These summaries act as a checklist for the Administrator to anticipate the Statements that are due from each Cardholder.

5.011 Foreign Vendor 1042 Reporting

Only the Administrator is authorized to make P-card purchases from foreign vendors.

- a) Before making any P-card purchases from foreign vendors, the Administrator coordinates with the Auditor to determine the appropriate tax forms to be completed, requires the vendor to complete these tax forms, and receives the tax forms from the vendor.
- b) If the tax law requires that Travis County withhold money from a foreign vendor's payment, the P-card cannot be used to make the purchase.

5.012 Card Security

The Cardholder must safeguard the P-card and the account number.

If the P-card is lost or stolen, the Cardholder must immediately notify the P-card Issuer at 1-800-316-6056. P-card Issuer's representatives are available 24 hours a day. The Cardholder must tell the representative that the call is regarding a Travis County P-card.

- a) The Cardholder notifies the Administrator immediately if the P-card is lost or stolen. The Cardholder is liable for any unauthorized use of the P-card that is posted to the Statement after the P-card is lost or stolen.
- b) The Cardholder is also subject to disciplinary action, the severity of which is consistent with the Cardholder's degree of responsibility for the loss or theft and may include termination of employment.

A new P-card may be issued to the Cardholder after the reported loss or theft if the Cardholder provides evidence that the loss or theft was not avoidable and not due to any carelessness or inappropriate behavior by the Cardholder. If a Cardholder finds a P-card that was reported lost or stolen, the Cardholder shall destroy the recovered P-card and return the pieces to the Administrator.

No One Else May Use the Card

The Cardholder must not allow anyone else to use his or her P-card or account number.

 a) If the Cardholder allows anyone else to use his or her P-card or provides anyone else with his or her account number, the Administrator revokes the Cardholder's authority to use the P-card and requires the Cardholder to return the P-card to the Administrator.

b) The Cardholder is also subject to disciplinary action, the severity of which is consistent with the seriousness of the unauthorized used and may include termination of employment.

Administer Cancels Card

If the Administrator revokes the authority of a Cardholder to use a P-card or if any Cardholder stops working for the Purchasing Office, the Administrator notifies the P-card Issuer in writing to cancel that Cardholder's P-card immediately.

5.013 Cardholder Separation from County

Before a Cardholder ceases employment for the Purchasing Agent, the Cardholder must surrender the following to the Administrator:

- a) P-card
- b) Purchasing Log since the last Statement period ended,
- Original sales documents like the Purchase Order, invoice, cash register tape and P-card slips, for Items not previously list on a Statement.
- d) Original delivery documents like packing slip, cash register tape and P-card slips for Items not previously list on a Statement,
- e) All information and documents related to disputed Items that have not previously been resolved, and
- f) Any other relevant documentation.

Upon receipt of these Items, the Administrator reviews and approves the Purchasing Log. The responsibility for the surrendered P-card remains with the Cardholder until the Purchasing Agent receives it.

If a Cardholder makes an unauthorized purchase, the Administrator requires the Cardholder to pay the County for the total dollar amount of all unauthorized purchases and other unauthorized costs charged to the P-card immediately.

- a) If the Cardholder does not pay for the unauthorized purchase immediately, the Administrator notifies the County Treasurer that the total dollar amount of all unauthorized purchases and other unauthorized costs charged to the P-card is a debt of the Cardholder due and owing to the County and the County pays no funds to the Cardholder until the debt is paid. The Treasurer may deduct the amount from the Cardholder's pay check unless a settlement agreement with the Cardholder provides for installment deductions to pay the amount over time.
- The Administrator notifies Payroll Disbursement that a payroll deduction is necessary and prepares the forms requested by the Auditor.

If it is anticipated that a Cardholder may terminate his or her employment, either voluntarily or involuntarily, or if a Cardholder has given notice of termination, the Administrator determines whether there are any unauthorized purchases since the last certified Purchasing Log was submitted by the Cardholder.

In addition, the Administrator determines whether there are any amounts still due from previous unauthorized purchases.

- a) If there are any such amounts due, the Administrator requires the Cardholder to pay the County the entire amount due immediately.
- b) If the Cardholder does not pay for the entire amount due immediately, the Administrator notifies the Cardholder that the entire amount due is a debt due and owing to the County and the County will deduct it from the Cardholder's pay check.
- c) The Administrator determines the amount of compensation and accrued leave available to pay any the amounts due and payable. If there is any amount due to the County as a result of unauthorized purchases or other unauthorized costs charged to the P-card, the Administrator must not allow the terminating Cardholder to

- use any accrued leave until the Cardholder pays entire amount due is paid in full.
- d) The Administrator notifies Payroll Disbursement that a payroll deduction is necessary and prepares the forms requested by the Auditor.

Administrator is Liable

If the Administrator does not follow the above procedures in a timely manner to ensure that the Cardholder pays any amount due to the County as a result of unauthorized purchases or other unauthorized costs charged to the P-card in full on or before termination, the Administrator is liable for the unpaid amounts that result from this negligence.

If the Administrator does not require any Cardholder to sign the "Employee P-Card Agreement," before a P-card is issued to the Cardholder, the Administrator is liable for the unpaid amounts that result from this negligence.

SECTION 6. DRAFTING TIPS

6.001 Overview

In this section, "drafting" means writing any type of document that has a legal effect and implies the need for more than one "draft" before the final document is complete and ready to use.

6.002 Drafting Tips

Any document is effective when the User Department's requirements are clearly articulated to the receiver - in the case of purchasing, the "receiver" is primarily the vendor community. In contrast, a document is ineffective if it is awkwardly worded, disorganized, or contains errors or visual distractions. A poorly drafted document may prompt responses that are not aligned with the User Department's actual needs.

If the document is a solicitation, it may prompt responses that are not aligned with the User Department's actual requirements or include unnecessary costs due to vendor confusion.

User Departments and Purchasing staff must write solicitations that attract responses that meet the User Department's business needs.

User Departments, Purchasing staff, and the County Attorney staff must write the contract resulting from a solicitation in a manner that reflects the whole agreement that was made about the Goods or services that are being purchased—not just the names of the parties, the Specifications, and the price—but also aspects like delivery, training, long-term maintenance and any other factors relevant to the purchase.

Drafters commonly use the following techniques in effective documents:

a) Organize Content for Readability. Present the information in a logical manner. Include relevant documents— organization charts, site plans, or work flow diagrams—as attachments to make information easier to read and reference.

- b) Use Short, Precise Sentences and Short, Simple Words. Present the information in a direct manner. Plainly state who is to do what. For example:
 - (1) In its Response, Respondent must include.....
 - (2) The Awarded Vendor shall provide....
 - (3) The Solution delivered by the Awarded Vendor shall include the following....
 - (4) Within five (5) business days of receipt of the Project Plan, the User Department shall....
- c) Eliminate Needless Words. Can this be said with fewer words? Does "Mediation is useful when the parties..." mean the same as "Mediation can be a useful process in some instances in which the parties...?" Does "submit an application" mean the same as "apply?"
- d) Use Present Tense. Present tense verbs state what is to happen now. In solicitations and contracts the action is taking place now. Using "will" results in action being due tomorrow and tomorrow is always a day away. Using past tense implies that the action is already completed.
- e) Use Active Voice. Active verbs assign responsibility to a particular person more clearly than passive verbs. Active verbs do not include a form of the verb "be" as a helper for the main verb.
 - (1) Active Voice: Contractor shall develop the Solution to comply with X standard.
 - (2) Passive Voice: The Solution shall be compliant with X standard.
 - (3) In the passive voice example, who is accountable for compliance is not obvious. It might be the contractor, the User Department, or both parties who are accountable for complying with the standard.
- f) Use "Shall," "Must," "May," and "Should" Appropriately.

- (1) Shall and Must. The words "must" and "shall" describe a command or a required action or condition. Take care when stating required conditions as inappropriate use could result in a restrictive Specification, disqualification of a response or failure to obtain the desired Good or service from a contract.
- (2) May and Should. The words "may" and "should" describe a permission or an advisory action. These words do not represent a condition with which the vendor must comply.
- g) Use Words Consistently. To help the reader understand what is needed, whether in the scope of work, in the terms and conditions of the solicitation, or in the contract, use the same word every time the same thing is referenced, and use a different word every time a distinction is needed.

In contrast, using many different words to describe the same person, the same function, the same activity, or the same item may cause confusion. For example, in a solicitation, using the following phrases interchangeably to indicate the same person or company is not advisable: "the successful Respondent," "contractor," "selected vendor," "selected contractor," "awarded vendor," "awarded contractor," or "vendor."

In addition, the rules that courts use to interpret legal documents require them to assume that a different word does in fact mean that the writer wants something different.

- h) Avoid Ambiguity. Do not use terms that have the potential for more than one interpretation. Define words and phrases, even industry jargon, to avoid misunderstanding about their meaning. But do not define a word if the definition is the same as the one in any dictionary.
- Be Complete and Avoid Repetition. State the requirement one time only. State all aspects of the requirement. Stating a requirement more than once does not emphasize its importance. It does increase confusion, especially if the

- repetitions of a requirement are stated slightly differently in different parts of the document.
- j) Proofread. To give the final version of the document a professional look and feel, User Departments, Purchasing staff, and County Attorney staff should proofread the document to make sure that:
 - (1) the requirements are clearly and accurately described,
 - (2) extra statements that have no practical value are removed, and
 - (3) there are no spelling or punctuation errors.

6.003 Using Hyperlinks in Documents

User Departments, Purchasing staff, and County Attorney staff may use hyperlinks within documents as a convenient way to deliver electronic content to potential Respondents and contractors.

Carefully consider the incorporation of information by using hyperlinks. Hyperlinks may provide an efficient way to transmit information. However, hyperlinks may also create issues which include at least the following:

- a) Inaccurate or Extraneous Information. Templates are often used as a starting point when documents are drafted. The drafter may review the hard copy content but may overlook hyperlinks. If a hyperlink is overlooked, the document may contain errors or provide information that is not consistent with the User Department's intent. Hyperlinks must be verified for accuracy every time they are used.
- b) Inadvertent Amendment to Solicitation or Contract. Information on web pages may change over time. If it changes, the terms of a solicitation or a resulting contract may be inadvertently amended by the change. Whether a change is serious depends on the nature of the information provided through the hyperlink.
- No Record of Hyperlink Content. Hyperlinks may become inactive because web pages are moved or no longer exist. The particular concern after contract award is that the uncertainty of

contract terms may lead to service delays, disputes, and possibly litigation.

If hyperlinks are used, the User Department, Purchasing staff, and County Attorney staff should create a method to clearly identify what the electronically linked information said on the applicable date. To do this, they may download it, include it in the master file in Purchasing, and

properly retain it in compliance with applicable records retention schedules.

The User Department and Purchasing staff should seek guidance about the use of hyperlinks within documents like solicitations and contracts from the County Attorney's office.

SECTION 7. SPECIFICATIONS

7.001 Overview

The first step in obtaining a contract is determining what the User Department needs. There are two routes to this. If the County has a contract that is expiring the Purchasing staff send the User Department the Specifications or requirements from the previous solicitation, including any changes to the original Specification or requirements made through contract Modifications, and requests any changes before the solicitation is reissued. The User Department reviews and returns the Specifications or requirements with any additions, deletions, or corrections noted.

If the contract is to satisfy a new need, the User Department must consider exactly what it needs and prepare new Specifications using the entire process discussed in this section.

The Specifications later become the guide for contract administration. A clear and concise Specifications is the key to reducing claims and disputes. Therefore, planning for contract administration occurs before issuance of the solicitation.

7.002 Purpose of Specifications

Specifications are the part of the solicitation document and contract that describe the physical characteristics, quality or desired outcomes of the Goods and services to be purchased. They may include requirements for testing, inspection, preparation for delivery, or installation of the Goods and services.

Specifications may focus on design features or performance requirements or both.

Specifications provide vendors with precise criteria about the minimum standard acceptable. They provide County evaluators guidelines for making an equitable award to the lowest and best bid from a Responsible Bidder.

7.003 Use of Consultant Services

If a consultant participates in drafting Specifications or in designing the project, or cost estimating for a public works project, that consultant may not submit a response to a subsequent solicitation.

7.004 Characteristics of an Effective Specification

An effective Specification has the following characteristics:

- a) Simple. Avoids unnecessary detail, but is complete enough to ensure that purchased Goods and services meet the needs of the User Department and satisfy their intended purpose.
- b) Clear. Uses words that are understandable to the User Department and vendors. Avoids the use of jargon and "legalese," and reduces confusion by using correct spelling and appropriate sentence structure.
- Accurate. Uses units of measure that are compatible with industry standards. Identifies quantities. Describes packing requirements.
- d) Competitive: Avoids unneeded "extras" that could reduce or eliminate competition and increase costs. Avoids details that are not necessary to serve the intended purpose. Identifies at least two commercially available brands, makes, or models (whenever possible) that satisfy the intended purpose.
- e) Flexible. Does not prevent the acceptance of a response that could offer greater performance for fewer dollars. Uses approximate values that are within a 10% range for the dimensions, weight, speed, etc. whenever possible, if these values can satisfy the intended purpose.

7.005 Preparation of Specifications

To gather information to facilitate writing Specifications:

- a) Meet with the User Department end users and supervisors, other stakeholders like an Occupant Department, an outside agency with similar functions, and the evaluation committee to understand the needs.
- b) Conduct thorough research about what is available in the market and the potential influences on the purchase (energy availability to run equipment, storage and maintenance requirements, etc.).
- c) An RFI may be issued to provide expertise; to obtain assistance in clearly and correctly stating what is required related to capability and capacity and to seek external assistance, when needed. RFIs request information and allow vendors to have input about current industry practices and market factors, and other helpful information.

To begin organizing the information, obtain existing Specifications used by other governments, professional trade associations, and professional purchasing associations. These may provide ideas and examples that can be customized in preparing Specifications. Some resources for samples include:

- a) Texas Specification Library located at the Texas Comptroller of Public Accounts⁵
- b) General Services Administration, Federal Supply Service – Specifications Section⁶
- c) Texas Department of Transportation Standard Specification Index⁷
- d) National Institute of Governmental Purchasing⁸. Contact the Purchasing Office for assistance with this source as it is available to members only.

Choose the type of Specification best suited to the identified needs:

- a) Design. Describes the physical characteristics and quality
- b) Performance. Describes the desired outcome or intended use of Item
- Functionality. Describes the desired result like vision coverage for insurance or accurate accounting for a computer application.
- d) Brand name or equivalent. Provides an example and describes the performance features of the example that are required but may stifle completion and result in higher prices.

Consider all aspects of the Item being purchased:

- a) What the life cycle costs are and whether a value analysis indicates Best Value.
- b) What obligations the vendor assumes related to risk and responsibility for compliance, delivery, training, installation, and warranty
- c) What the intended use of the Goods or services being purchased is.

Writing Specifications requires clear, concise, consistent, and precise wording and plain language. Some factors that improve Specifications are:

- a) Using proper grammar and punctuation with consistent style and formatting.
- b) Grouping similar items into categories so the Specification is easy to read.
- c) Maximizing competition, by allowing as much variation as acceptable, identifying minimum requirements and required outcomes, referring to commercial standards like UL and NEMA.
- d) Stating the acceptance criteria or how the item will be tested or evaluated.

⁵ www.window.state.tx.us/procurement/pub/specificiations-library

⁶ www.gsa.gov

⁷ http://www.dot.state.tx.us/gsd/purchasing/tssi_alpha.htm

⁸ www.nipg.org

7.006 Specification Checklist

After completing the first draft of the Specifications, compare it to the checklist below. Noting what else may apply to the needed Goods and services assists in locating any additional topics to address:

- a) Intended use or purpose
- b) Detailed Good or service requirements
- c) Performance requirements
- d) Tests Inspections Acceptance
- e) Compliance, like safety, environmental, or industry standards
- f) Any restrictions that County might impose
- g) Delivery locations
- h) Installation
- i) Available facilities and utilities
- j) County-provided Goods or services
- k) Guarantees or Warranty
- I) Training requirements
- m) Delivery method and date or Completion date
- n) Quantity
- o) Key deliverables
- p) Responsibilities—Vendor and County
- q) Packaging
- r) Quality control
- s) Contract transition
- t) Services provided by third parties

Except for construction projects, the Purchasing staff determine whether Specifications comply with legal requirements and adequately state quality control.

SECTION 8. REQUIREMENTS APPLICABLE TO PURCHASES BOTH UNDER AND OVER \$50,000

8.001 Legal Requirements

A vendor who has responded to a solicitation must comply with the following statutory provisions before the County may award a contract to it:

- a) Offset for Taxes Owed to County
- b) Foreign Vendors
- c) Local Business Preference
- d) Contracts with Bidders from Other States
- e) Suspended and Debarred Contractors Verification
- f) Israel Boycott Verification

Offset for Taxes Owed to the County

Before awarding a contract, Purchasing staff check with the County Tax Assessor Collector's Office to determine if the selected vendor owes delinquent taxes to the County, and includes the results in the master file. If there are delinquent taxes owed to the County, Purchasing staff advise the County Treasurer to give notice to the selected vendor and the County Auditor so that payments are not made until they are paid. Purchasing staff check this again, and include the results in the master file, before each renewal.

A contract may be awarded to a selected vendor who owes taxes to the County, if payments due for Goods or services provided may be used to offset the amount owed.

Foreign Vendors

- a) Before making any purchase from a foreign vendor, Purchasing staff coordinate with the Auditor's Office to ensure that all potential tax implications are addressed.
- b) Purchasing staff must obtain an original W-8 from each foreign vendor.
- c) The Auditor's Office enters foreign vendors in SAP.

d) Before choosing a foreign vendor, the User Department must make commercially reasonable efforts to locate a domestic vendor.

Local Business Preference

In this subsection:

"Local Business" means a business whose principal place of business is within the boundaries of Travis County.

"Additional economic development opportunities" means the employment of residents of Travis County to perform the contract sought and the increased property tax revenues available to Travis County from the local presence of the business and the residences of its Employees in Travis County.

The County may give a Local Business a preference for bids for real and personal property in limited circumstances. The County may not give a Local Business a preference for contracts for any services, including construction services⁹. Due to the administrative costs, the County applies this preference only to real and personal property purchased through a competitive solicitation that complies with the Purchasing Act requirements for bids that are expected to be over \$50,000.

The Purchasing staff ranks all bids from lowest to highest bid price. If the lowest bidder is from a Local

⁹ Texas Local Government Code, section 271.905

Business, the County awards the contract to the lowest bidder unless other allowable considerations disqualify that bidder.

If the lowest Bidder is not a Local Business, the Purchasing staff calculate 103% of the lowest bid price and compares that to the other bid prices offered and determines whether any other Bidder's price is less than 103% of the lowest bid price and qualifies as a Local Business. If no other bid is less than 103% of the lowest bid price, then the Commissioners Court awards the contract to the non-local Bidder offering the lowest bid price unless other allowable considerations disqualify that Bidder.

If any other Bidders prices are less than 103% of the lowest bid price, the Purchasing staff, starting with the next lowest bid price, reviews the bid to determine if that Bidder:

- a) stated it is a Local Business in its bid,
- b) is, in fact, a Local Business, and
- c) has provided any information about any additional economic development opportunities that would result from the award of the contract to it.

If the Bidder is a Local Business that has asserted that a contract with it will provide Travis County with additional economic development opportunities, the Purchasing Agent submits an agenda request to the Commissioners Court advising the court that it may award the contract to any of the following:

- a) The Bidder offering the lowest bid price, or
- b) The Bidder that is a Local Business if the Commissioners Court determines in writing that the Local Business has offered the best combination of contract price and economic development opportunities for Travis County, or
- No one and decline to award any contract and reject all bids.

Contracts with Bidders from Other States

This section applies only to County contracts that do not involve federal funds and are for general construction or an improvement, a public works project, or a purchase of a service, supplies, materials, or equipment.

In this subsection,

"Non-resident Bidder" means a Bidder for which Texas is not the principal place of business for it or its ultimate parent company or majority owner.

"Resident Bidder" means a Bidder for which Texas is the principal place of business for it and its ultimate parent company or majority owner.

The Purchasing staff determine if:

- a) The purchase involves federal funds,
- b) The Bidder is a Non-resident bidder, and
- c) The Bidder's principal place of business is located in a state that regulates the award of government contracts to a Bidder whose principal place of business is not located in that state. The comptroller publishes a list of these states in the Texas Register.

If all three criteria above apply to the Respondent and the solicitation, the County may not award the resulting contract to the Non-resident bidder unless the Non-resident Bidder underbids the lowest bid submitted by a Responsible Resident Bidder by an amount that equal to or more than the amount by which a Resident bidder would be required to underbid a Non-resident Bidder to obtain a comparable contract in the state in which the:

- a) Non-resident's principal place of business is located, or
- b) Non-resident Bidder is a resident manufacturer.

For example, a Bidder's principal place of business is in Alaska. The laws of Alaska give the Alaskan Bidder a 5% preference. The Alaskan Bidder submits a bid of \$100,000 on a County contract for general construction that does not involve federal funds. The Alaskan Bidder cannot be awarded the contract unless all bids by Responsible Resident Bidders are more than \$105,000.

Suspended and Debarred Vendor Verification

Before awarding a contract, Purchasing staff check the Excluded Parties List (Federal Suspended and Debarred Contractors List) to ensure the selected vendor is not on it, and include this verification in the master file.

Before each annual renewal, Purchasing staff review the vendor file in SAP to verify that current contractors are not on the Excluded Parties List, and note the results of the verification in the master file.

If a contractor is on the Excluded Parties List, the Purchasing staff contact the contractor to determine whether there is an error in that list and, if there is no error, the reason that the contractor is excluded. The Purchasing Agent advises the Commissioners Court so that it can take appropriate action.

Israel Boycott Verification

The County must include a provision in every contract in which the contractor verifies that it does not boycott Israel and will not boycott Israel during the term of the contract.

8.002 County Policies and Requirements

A County Official or Department seeking to purchase any Goods or services must comply with the following five County policies and requirements before the Purchasing staff begin a solicitation:

- a) Grant Funded Purchases
- b) Purchases Funded by Risk Management Coverage
- c) Oversight Review of Requested Purchases
- d) Worker Protection Compliance
- e) Environmental Stewardship

Grant Funded Purchases

The User Department must provide the Purchasing Agent with a copy of all purchasing requirements in the grant contract before any purchases are made with grant funds.

All purchases made with grant funds must comply with both the terms and conditions of the grant contract and the County's purchasing procedures.

Purchases Funded by Risk Management Coverage

Damaged or Lost Goods

If Goods are stolen, the User Department must immediately report them to the appropriate law enforcement agency and complete an incident report. When User Departments sustain unexplained loss or damage to Goods or buildings, or Goods are stolen, the User Department contacts the Risk Manager to determine if a claim should be filed because the asset qualifies for reimbursement under Travis County's self-funded risk program or under insurance coverage purchased by County.

When the Risk Manager determines if a claim can be filed, regardless of the answer, the User Department must provide the damaged asset and information about it to the Asset Manager for inventory records.

If a claim can be filed, the Purchasing staff process the purchase and the Risk Management program coordinates funding for replacement or repair.

Oversight Review of Requested Purchases

Departments that manage intradepartmental services review requests for Goods and services that affect their systems.

These include reviews by:

- Facilities Management Department of Goods and services that provide physical security and equipment that requires additional space;
- b) Wireless Communications Committee of wireless communications equipment;
- Information Technology Services of equipment associated with information systems managed by the Chief Information Officer;
- d) Communication and Records Services of record storage equipment, filing supplies, copying equipment, microfilm and micrographic equipment and other emerging record storage technologies, and

 e) TNR Fleet services of vehicles and earth moving, material-handling, road maintenance or construction equipment.

Departments that manage intradepartmental services assist in the analysis of whether maintenance for Goods and services that affect their systems should be provided by a vendor's maintenance contract or by County staff.

These include reviews by:

- a) Information Technology Services of ongoing maintenance contracts on all software and hardware associated with information systems managed by the Chief Information Officer;
- b) Communication and Records Services of maintenance contracts for copying equipment and microfilm and micrographic equipment and other emerging record storage technologies.
- c) Shopping Carts for these services are automatically routed to them by SAP before they are forwarded to Purchasing. If a User Department is preparing a request for a solicitation over \$50,000, it needs to request the appropriate oversight review.

Worker Protection Compliance

Departments are required to do business with companies who comply with the federal and state labor laws and regulations including:

- The Fair Labor Standards Act through limiting child labor, requiring payment for overtime work and establishing a minimum wage.
- The Occupational Health and Safety Act which requires safe working practices and procedures in all projects.
- Any state or federal laws prohibiting discrimination and harassment in the work place.

The Purchasing Office is strongly committed to upholding these laws and regulations.

Environmental Stewardship

The Commissioners Court directs the Departments reporting to it and encourages Officials and the Purchasing Office, to the extent allowed by the laws of Texas, to attempt to:

- a) Spend a portion of their annual purchasing budgets for "environmentally preferable" Goods and services which have less negative effect on human health and the environment than similar Goods and services. Examples of "environmentally preferable" include processing used materials into new products to save resources and energy, and collecting, storing and transporting materials from the initial user to produce recycled Goods, like remanufactured toner cartridges, re-refined motor oil, and recycled content paper;
- Seek a reduction in environmental damages associated with purchases by increasing acquisition of environmentally preferable Goods and services to the extent feasible, consistent with price, performance, availability, and safety considerations;
- Take environmental factors into account as early as possible in planning and decision-making;
- d) Share responsibility for environmentally preferable purchasing with other User Departments;
- e) Revise minimum content standards as necessary to ensure that designated Goods contain the maximum practical amount of recovered material and are consistent with guidelines and regulations promulgated by the United States Environmental Protection Agency and other federal and state agencies;
- f) Ensure that environmentally preferable Goods are designated whenever practical;
- g) Encourage venders to give consideration to recycled boxes, water soluble peanuts, and other products that replace bubble wrap and petroleum based peanuts which are harmful to the environment; and
- h) Consider environmental factors in selecting Goods, including life cycle analysis of pollutant releases, waste generation, recycled content,

energy consumption, depletion of natural resources, and potential impact on human health and the environment.

Contractors performing services for the County are required to comply with all applicable waste management laws. Requirements of the Waste Management Program of the Travis County Transportation and Natural Resources Department which are not specifically required by law are incorporated into service contracts and commodities Specifications whenever the Department requesting these purchases determines that this inclusion meets the program feasibility criteria.

8.003 Requirement Applicable to Specific Goods and Services

If any of the following optional statutory requirements for vendors apply to the Goods or services being solicited, the User Department must consider whether to require them in the solicitation:

- a) Consideration of Safety Records
- b) HIPAA
- c) Equipment Leases and Maintenance Contracts and Their Renewals
- d) Non-Construction Bonding Requirements
- e) Computer Hardware/Software Demonstrations
- f) onsideration of Safety Records

If the solicitation states that the County will consider the safety record of the Respondent and includes a Safety Record Questionnaire in its appendix, County takes into account the Respondent's safety record in determining whether to award the contract to that Respondent.

The safety record includes compliance with requirements for the safety of the environment.

In addition to the Respondent itself, "Respondent" includes the firm, corporation, partnership or institution represented by the Respondent; or

anyone acting for that firm, corporation, partnership, or institution.

Safety Record Definitions

The definitions applicable to the criteria for evaluating the safety record of a Respondent are as follows:

"Environmental protection agencies" include the U.S. Army Corps of Engineer, the U.S. Fish and Wildlife Service, the Environmental Protection Agency, the Texas Commission on Environmental Quality (TCEQ) and its past associated agency, the Texas Natural Resource Conservation Commission, the Texas Department of Health, the Texas Parks and Wildlife Department, the Structural Pest Control Board, agencies of local governments that enforce environmental protection laws or regulations, and similar regulatory agencies of other states of the United States.

"Citations" include notice of violation, notice of enforcement, suspension/revocations of state or federal licenses or registrations, fines assessed pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, and judicial final judgments. Notice of Violations and Notice of Enforcement received from TCEQ shall include those classified as major violations and moderate violations under TCEQ's regulations for documentation of Compliance History.¹⁰

Safety Record Criteria

- a) If the Respondent reveals more than two (2) cases in which final orders have been entered by the Occupational Safety and Health Review Commission (OSHRC) against the Respondent for serious violations of OSHA regulations within the past three (3) years, County will, at its sole discretion, determine whether to disqualify the Respondent.
- b) If the Respondent reveals more than one (1) case in which Respondent has received a citation from an environmental protection agency for

¹⁰ 30 TAC, Chapter 60.2 (c) (1) and (2)

- violations within the past five (5) years, County will, at its sole discretion, determine whether to disqualify the bidder.
- c) If the Respondent reveals that the Respondent has been convicted of a criminal offense which resulted in serious bodily harm or death within the past ten (10) years, County will determine whether to disqualify the Respondent.

HIPAA

"HIPAA" means the federal laws related in part to the confidentiality and protection of health information.

The "Component Units" that Commissioners Court has designated under HIPAA include:

- a) the Wellness Clinic,
- b) the Health Plan,
- c) STARFlight,
- d) the health care facilities in the corrections facilities (both at the jail and in juvenile probation),
- e) certain HHS programs, and
- f) certain Justice and Public Safety programs for offenders.

If the contractor must create, receive, maintain, or transmit protected health information while providing services, the contractor must enter into a Business Associate Agreement. Services that may involve creation, receipt, maintenance, or transmission of protected health information include: claims processing or administration, utilization review, health care billing, data analysis, data aggregation, administration, quality assurance, repricing; patient safety activities, plan benefit management, practice management, legal services, actuarial services, accounting services, consulting services, management services, administrative services, accreditation services, or financial services.

HIPAA Determination

If a User Department performs services for other Departments, that User Department must determine whether any of the Goods or services requested with a Shopping Cart will result in access to protected health information.

- a) If not, HIPAA does not apply.
- b) If so, then this Shopping Cart is treated like a Shopping Cart from a Component Unit.

A Shopping Cart or other request for Goods or services for a Component Unit requires the User Department to determine whether the selected vendor may obtain any access to protected health information as a result of its performance under the contract.

- a) If not, HIPAA does not apply.
- b) If so, the selected vendor must enter into a Business Associate Agreement with Travis County, preferably at the same time that the contract is executed, but in all cases, before performance under the contract begins.

If the User Department or the contractor later learns that the contractor has access to protected health information as a result of the performance of the contract, they must notify the Purchasing staff of that.

If the Purchasing Office learns that the contractor has access to protected health information, the Purchasing staff verify this. As soon as possible after verifying access, the Purchasing Office requires the contractor to enter into a Business Associate Agreement with Travis County.

In addition, the Purchasing staff include a HIPAA compliance provision in all county contracts except contracts documented only by a Purchase Order. This provision requires the contractor to enter into a Business Associate Agreement with Travis County immediately if either the County or the contractor realizes that the contractor:

- a) Is creating, receiving, maintaining, or transmitting protected health information at any time during the contract, or
- b) Is providing legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation or financial services that involve disclosure of protected health information from the County to it.

The Purchasing Office maintains copies of all Business Associate Agreements into which the County enters.

Equipment Leases and Maintenance Contracts and Their Renewals

Purchasing staff purchase all equipment Leases and maintenance contracts. The Purchasing Agent supervises all Negotiations for these with vendors. Purchasing staff maintain the contract originals and send the User Department a copy.

Purchasing staff monitor maintenance contracts for expiration dates.

If eligible for an exemption, the Purchasing Agent obtains the exemption orders for their renewals or extensions.

Non-Construction Bonding Requirements

Unless legally required, the Purchasing Agent determines whether to require a bond in the solicitation.

Bid Bonds are not required for contracts that are less than \$100,000. Bid Bonds and Performance Bonds are not required from any vendor whose rates are subject to regulation by a state agency.

Bid Bonds in the amount of 5% of the total contract price may be requested for a contract exceeding \$100,000. If a Bid Bond is required by law, a surety company authorized to do business in Texas must execute the bond.

Performance Bonds are not usually required for contracts that are less than \$100,000, but may be required at the Purchasing Agent's discretion. In a contract for the purchase of earth moving, material-handling, road maintenance or construction equipment, the Commissioner Court may require a contractor to furnish a bond payable to the County in the amount of the repurchase price of the equipment.

If the Purchasing Agent requires a Performance Bond for a particular contract, the requirement may be satisfied by either a Performance Bond or a Letter of Credit. The solicitation indicates that the minimum requirements for a Performance Bond are that the bond must be for the full amount of the contract price, executed by a surety company authorized to do business in Texas, and submitted to the Purchasing Office within 30 days after execution of the contract and before the contractor begins work.

If a Letter of Credit is selected, the Purchasing Agent may only accept a Letter of Credit on the following conditions:

- The County Attorney reviews and acknowledges in writing the legal sufficiency of using a Letter of Credit for this contract,
- b) the terms of the proposed Letter of Credit, and
- c) The Purchasing Agent has verified the acceptability of the financial condition of the institution providing the Letter of Credit.

Computer Hardware/Software Demonstrations

User Departments may not arrange for demonstrations or trials of technical products and services, like computer hardware or software outside of a solicitation process. If these are desired to evaluate it, Purchasing Office staff arrange for any demonstration or trial use of these products and services.

The Purchasing Office and ITS coordinate the installation or trial or evaluation of any technical system or software on a County production network.

A Department shall not ever install or implement any trial or evaluation technical system or software on a County production network because the trial may adversely affect the performance, security, or stability of other County resources.

SECTION 9. OVER AND UNDER \$50,000: SPECIAL CIRCUMSTANCES — EMERGENCIES

9.001 Definition of Emergency

An Emergency Purchase, as used in this section, is a purchase essential to preserve or protect the public health or safety of the residents of Travis County or for the preservation of Travis County property that arises from a present, immediate and existing emergency which could not be foreseen.

There are four types of purchases needed in Emergencies:

- a) Under \$50,000 and generally outside of regular work hours, like a broken air conditioner one August night or a burst sewage pipe that is overflowing any time of day or year.
- b) Over \$50,000 that can be managed until the next Commissioners Court meeting, like replacement of a furnace used to heat living units at the juvenile detention facility that imploded during a cold snap in December.
- c) Over \$50,000 that must be dealt with before the next Commissioners Court meeting like shelter for residents evacuating their homes due to wild fires or floods.
- d) Purchases of any size that result from Declaration of Local State of Disaster by the County Judge.

9.002 Purchases under \$50,000 and Generally After Hours

These purchases are used to respond to circumstances too urgent to wait for Shopping Cart approval and generally after hours but sometimes unforeseen and during the day.

Each User Department using Emergency Purchase Orders must have written internal procedures for Emergency Purchases under \$50,000 that occur outside of regular work hours.

Those procedures should require that:

- a) Employees contact their financial officer or other designated person for approval before purchasing.
- b) The User Department enter a Shopping Cart on the first working day after the purchase and provide an e-mail to the Purchasing Agent describing the purchase (at least the value, item description and quantity) and the circumstances that made the purchase necessary outside of regular work hours.

The Purchasing Agent must approve the Department's proposed procedures before they are used.

If the Purchasing Agent has not approved emergency purchasing procedures for a Department, the User Department must wait until the next working day and make the purchases through the Shopping Cart process.

9.003 Purchases Over \$50,000

When these purchases are over \$50,000, the Commissioners Court must order the purchase contract exempt from the County Purchasing Act before it can be made.

The User Department, Purchasing staff and the County Attorney staff must consider whether there is an exemption criteria that applies to the circumstances.

The most likely to apply in an emergency are:

- a) An Item that must be purchased in a case of public calamity if it is necessary to make the purchase promptly to relieve the necessity of the citizens or to preserve the property of the County;
- An item necessary to preserve or protect the public health or safety of the residents of the County;

- c) An item necessary because of unforeseen damage to public property.
- d) The Official or County Executive accountable for responding to the emergency must determine the urgency of the need.

Two Levels of Emergency

There are two levels of urgency that may apply to these purchases:

- a) Low level that can be considered at the next Commissioners Court meeting.
 - If the need can be temporarily resolved until the next regularly scheduled Commissioners Court meeting, then the User Department and Purchasing collaboratively submit an agenda request for an order exempting the purchases needed to permanently resolve the needs generated by the emergency.
- b) High level that must be considered at an emergency Commissioners Court meeting.
 - If the need cannot be temporarily resolved until the next regularly scheduled Commissioners Court meeting, then the User Department contacts the County Judge to determine whether the County Judge should call an emergency Commissioners Court meeting.

The County Judge may consult with the County Attorney about what is legally required to implement this decision before it is made.

If the decision is to call an emergency meeting, the Purchasing Agent prepares the agenda request and back-up in collaboration with the User Department and County Attorney staff. The County Attorney staff prepares the exemption order.

9.004 Any Size Purchase During Local State of Disaster Declared by County Judge

A local state of disaster includes local circumstances that are described in the following definition:

"Disaster means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, extreme heat, other public calamity requiring emergency action, or energy emergency."¹¹

If the County Judge declares a local state of disaster, the County Judge is granted the following powers related to purchasing and may:

- Temporarily or permanently acquire by Lease, purchase, or other means sites required for installation of temporary housing units or emergency shelters for disaster victims in Travis County;
- Enter into arrangements necessary to prepare or equip the sites to use the housing units or shelters, including arrangements for the purchase of temporary housing units or shelters and the payment of transportation charges;
- c) Enter into purchase, Lease, or other arrangements with an agency of the United States for temporary housing units to be occupied by disaster victims in Travis County;
- d) Do all things required to prepare the sites to receive and use temporary housing units or emergency shelters;
- e) Clear or remove debris or wreckage from public land or water if it threatens public health or safety or public or private property during a state of disaster in Travis County;

¹¹ Texas Government Code 418.004

f) Clear or remove debris or wreckage from private land or water if it threatens public health or safety or public or private property in a state of disaster in Travis County and if the County has an unconditional authorization or is indemnified against any claim arising from its removal unless further delay is not practical and would create a greater risk to public health or safety.

These powers do not require an exemption order or approval of Commissioners Court or the Purchasing Agent but only exist as long as the Declaration of Disaster continues.

SECTION 10. PURCHASES UNDER \$50,000

10.001 Application of Statutory Authority

For purchases of Goods and services totaling under \$50,000, the Purchasing Act authorizes the Purchasing Agent to select the exact Goods or services to meet the requests of User Departments.

The Purchasing Agent selects the vendor and performs all actions necessary to purchase these Goods and services.

10.002 Purchases Under \$5,000

To the maximum extent practical, Purchasing staff select the vendor submitted as the source of budgetary estimate by User Departments for purchases up to \$5,000.

10.003 Quick Quote Process

If reasonable and practical, Purchasing staff use the "Quick Quote" process for purchases estimated to be over \$5,000 and under \$50,000. A Quick Quote is used to obtain price and delivery quotations that meet minimum quality Specifications for a specific quantity of specific Goods and services.

Quick Quotes are not advertised in the newspaper. Vendors respond to a Quick Quote request with firm quotations, and generally the lowest-cost quotation is awarded the contract.

10.004 Factors Considered

In selecting the exact Goods or services requested by the User Departments, the Purchasing staff consider the following:

- The stated needs of the User Department and whether the exact Goods or services selected meet those needs;
- b) Available information about sources and prices of the Goods and services;

- The delivery requirements of the User Department and when the vendor can deliver;
 and
- d) Any other information that a reasonable and prudent purchasing professional would consider in all the circumstances of the purchase.

10.005 Procedure

The User Department submits a Shopping Cart for Goods or services not available on an existing contract with detailed descriptions of the Goods or services required. Based on this description, wherever reasonable and practical, the Purchasing staff:

- a) Solicit all vendors in Highway District 14 on the Centralized Master Bidders List, including both HUBs and non-HUBs, identified by the appropriate National Institute of Government Purchasing Commodity Services Code, and using the Quick Quote process via BidSync which documents the vendors that respond and the prices offered;
- Select the vendor who offers the Best Value at the lowest price taking into account the urgency of the User Department's need and the speed of delivery;
 - If quality and delivery terms meet County needs, Purchasing staff select the vendor who provides the lowest price;
 - (2) If Purchasing staff do not select the vendor offering the lowest price, they document why they selected another vendor in SAP; and,
- c) Order the Goods and services from the vendor who offers the quality, cost, and delivery schedule most consistent with the needs of the User Department.

The Purchasing Office may deviate from the procedure for purchases under \$50,000 if the deviation is in County's best interest and facilitates specific County operations.

10.006 Compliance Verification

The Purchasing staff monitor the SAP Maverick Spend report to determine if any Product Category Code "buckets" are approaching or over \$50,000 during the current fiscal year to verify compliance with the legal requirement to competitively solicit purchases over \$50,000.

SECTION 11. COMPETITIVE SOLICITATION OF PURCHASES OVER \$50,000

11.001 Purposes of Mandatory Procedures

The Purchasing Act states mandatory procedures for competitive solicitations for Goods and services that are expected to cost over \$50,000¹². The purposes of competitive solicitation are to give qualified, Responsible vendors a fair and equitable opportunity to do business with the County and to provide the County with the best possible price and Best Value for the needed Goods and services. Generally, the Commissioners Court approves these contracts.

11.002 Methods of Competitive Solicitations

The two primary methods of competitively soliciting purchases are bidding and proposals.

Throughout this section, "bids" are vendor responses in the IFB procedures and "proposals" are vendor responses in the RFP procedures. Unless specifically noted, the following procedures apply to both the IFB and RFP.

Table 11.002 IFB and RFP Solicitations

IFB	RFP
The purpose of the Competitive Purchasing Procedures is to ensure the lowest possible price is received. The IFB method is legally required for purchasing Goods and supplies and non-personal services unless they are available through a simpler method approved by statute. It is used when the requirements can be precisely, definitively described and are readily available. It may be used for both off-the-shelf types of requirements and custom produced requirements.	The purpose of Competitive Purchasing Procedures is to obtain the product that best meets the functional needs of the County at the lowest possible price. The RFP method is legally allowed for purchasing insurance coverage, high technology Goods and services, landscape maintenance, travel management, recycling, and other Items for which the Purchasing Agent determines that using an RFP is in the best interest of the County if Commissioners Court consents. "High technology" Goods and services include software, firmware and technical services used for data processing equipment; telecommunications, radio, and microwave systems; electronic distributed control systems and building energy management systems.

11.003 Written Memorandum

The Official or County Executive sends a written request (memorandum or an e-mail) to the Purchasing Agent as the initial request for Goods or services.

The request must include the budget line items from which the purchase is funded or an explanation about how funding is obtained.

Specifications or requirements may be attached to the request and sent electronically to the Purchasing Office. If Specifications or requirements are not

¹² Texas Local Government Code Chapter 262

attached, the Purchasing staff and the User Department jointly develop them.

The User Department enters a Shopping Cart or a funds reservation in SAP.

The Purchasing staff do not begin a solicitation unless:

- a) The appropriate budget line item includes sufficient unencumbered funds for the purchase; or
- b) The Planning and Budget Office verifies that funds are available through budget transfers.

11.004 Defining the Need

When the need for a good or service over \$50,000 is identified, the User Department should immediately contact the Purchasing Office for assistance in defining the requirements to be used for the solicitation and developing the final Specifications. These must:

- a) state the needs clearly,
- treat all vendors fairly and without favoritism by permitting free and open competition to the maximum extent reasonably possible, and
- c) be contractually sound.

TABLE 11.004 IFB AND RFP REQUIREMENTS

IFB	RFP
The final Specification should be comprehensive and broadly defined to allow maximum competition.	The requirements should functionally define the needs and requirements. The requirement must be quantified and structured to secure the Best Value; and encourage innovative solutions to the functional requirements.
The IFB solicits "sealed" bids from vendors based on the County's Specifications and contractual terms.	The RFP solicits "sealed" proposals from vendors based on the County's functional requirements and contractual terms and conditions.

11.005 Selecting Members for Evaluation Committee

Purchasing and the User Department collaborate on both the appropriate number of committee members and the knowledge and experience needed to evaluate which proposed solution best meets the need.

Generally, evaluation committees are composed of as few members as needed to address the complexity of the need. For instance, the evaluation committee for the workers compensation third party administrator might be as small as two or three. The committee to evaluate a computer system serving several elected officials' offices might be composed of subcommittees and have a dozen members.

Committee members must be free from bias and conflicts of interest. They must have the experience and knowledge required to apply the evaluation criteria to the proposed solutions and identify the best value solution proposed. This may only need to be the manager of the program and Purchasing staff. Or it may be a combination of end users, the project manager, and other stakeholders. These might include employees with financial expertise to evaluate the stability of the company, technical expertise to evaluate whether the solution meets the program needs of each office and management to assess the cost proposed.

After the number and competencies needed are determined, those to serve on the committee are selected. They should include persons with relevant knowledge and experience. Appropriate employees who have the authority to make recommendations without outside approval are asked to participate. Generally, it is best practice not to have both an employee and that employee's supervisor on an evaluation committee.

11.006 Best Value

In determining Best Value, the County considers various factors depending on what is being purchased. The County may consider the following factors:

- a) Initial purchase price,
- b) On-going maintenance and operating cost,
- c) Expected life of the Goods or services,
- d) Capacity for expanding or upgrading Goods or services such as in software and hardware purchases,
- e) Reliability of the Goods or services,
- f) Level of training required for County staff to use the Goods or services,
- g) Level of technical support required by County staff
- h) Reputation of vendor, and
- Willingness to accept the County's contractual terms and conditions.

11.007 Special Consideration - Ongoing Maintenance

User Departments should consider, evaluate, and price all ongoing maintenance required by an Item when it is initially purchased. This is especially important for major capital equipment purchases and high technology products.

User Departments should consider and budget for internal costs such as for staff, parts, supplies, training, and for the required costs of any outsourced Goods and services such as labor, supplies, materials, technical resources, and repair/maintenance services.

For high technology purchases, User Departments should consider and budget for initial and short-term and long-term costs for hardware, software, subscriptions, and services. Generally, costs associated with purchases of:

 a) Hardware includes equipment and fixed assets, installation, ongoing training, maintenance, warranties, subscriptions, and post-warranty maintenance. b) Software includes licenses, subscriptions and support contracts that may have a set price for a fixed term or a "cap," or limit on periodic price escalation may be negotiated.

Subscriptions may include online access to resources, cloud-based services, and training.

Services may include consultants, subject matter experts, managed service providers, and staff augmentation.

11.008 Notice

After the Specifications or requirements are completed, Purchasing staff incorporate them into a solicitation document that also includes a description of the process, forms used in the process, and contractual terms and conditions.

When the solicitation document is complete, Purchasing generally publishes the solicitation on BidSync for 21 days and places an Advertisement of the proposed purchase at least once a week for two consecutive weeks. The first day of publication must be at least 14 days before the opening date of the solicitation.¹³

If necessary, the notice may be published additional times. The notice includes:

- a) Either the Specifications or requirements describing the Goods and services, or a statement of where they may be obtained;
- b) The time and place for receiving and opening responses to the solicitation;
- c) The name and position of the Employee to whom solicitations are sent;
- d) Whether the vendor should use lump-sum or unit pricing and IFB must explain how the lowest price is calculated;
- e) The type of bond required of the vendor, if any; and
- f) The method of payment by the County.

11.009 Optional Pre-Response Conference

Texas Local Government Code allows the Commissioners Court to require potential vendors to attend a mandatory pre-response conference to discuss contract requirements and answer vendor questions.¹⁴

The Purchasing staff work with the User Department to determine if a pre-response conference is necessary and whether attendance is mandatory or optional. The Purchasing staff manage any pre-response conference and requests that the User Department makes staff available to answer questions at the conference.

If the pre-response conference is mandatory, Purchasing staff may send any additional notice for the proposed purchase ONLY to prospective Bidders who attended the conference. The notice must be sent by certified mail, return receipt requested.

11.010 Amendment of Solicitation

The Purchasing Agent extends the opening date of responses stated on the notice if an error is discovered, or if the nature of the Goods or services requires an extension. The Purchasing Agent may amend a solicitation if:

- a) Inquiries about the meaning of a substantive requirement or other critical element of the solicitation indicate the need for an Amendment to clarify the original intent or to correct clerical errors:
- The changes are so insignificant that they are not likely to matter to the vendor's ability to respond; or
- c) The Amendment does not change the general scope of the solicitation.

The Purchasing Agent determines the number of days between the date of the Amendment and the opening date in the notice based on time needed to respond to the changes.

¹³ Texas Local Government Code, section 262.025

¹⁴ Texas Local Government Code, section 262.0256

11.011 **Electronic Response from Vendors**

The Purchasing staff encourage vendors to submit their response to solicitations and certain other contracts electronically through BidSync, the County's automated on-line response management services, or a successor vendor selected by the Purchasing Agent.

Vendors may sign responses electronically.

Vendors may swear the ethics sworn declaration electronically.

All electronic transactions must comply with the Uniform Electronic Transactions Act and all other applicable law. 15

11.012 Receipt of Responses to Competitive **Solicitations**

To ensure the identification, security, confidentiality of responses to solicitations, both electronic and paper, the Purchasing staff comply with the following procedures:

- a) The Purchasing Agent receives all responses as specified by the solicitation document.
- b) Solicitations are not accepted after the opening time on the day of response opening. responses offered after the opening time are returned unopened to the vendor with a letter from the Purchasing Agent notifying the vendor

- that the submitted response arrived after the due date and time.
- c) The Purchasing staff record the name of the vendor's representative submitting solicitation, and the time and date the response was received.
- d) After a response is received, Purchasing staff provide a secure place to hold it until the opening date and time. Responses are only accepted if sealed. Responses remain sealed until Purchasing staff open them in a public forum at the advertised date and time.
- e) On rare occasions, responses that are received in the mail or by other independent carrier may be inadvertently opened. If this occurs, the receiving Employee immediately calls another Employee of the Purchasing Office to act as a witness that the details of the response (especially the price for a bid) were not reviewed and the response is resealed by that Employee of the Purchasing Office, and the incident is documented.

These procedures are done in a manner that avoids revealing prices or response information. Publicly receiving sealed responses and recording the submission of requested responses inhibits both the ability to and any perception that the Purchasing Office is manipulating the receipt of solicitations or showing favoritism.

11.013 **Public Opening of Solicitations**

IFB	RFP
The Purchasing staff publicly open, read aloud, and document the bid, including the price, at the date, time, and place in the notice. Preliminary tabulations are provided to the public upon request.	The Purchasing staff publicly open and document sealed proposals at the date, time, and place in the notice. They only announce the names of vendors submitting proposals.
	The Purchasing staff open proposals to avoid disclosure of contents to completing proposers and to keep them secret during Negotiation. Except for trade secrets and confidential or proprietary information for which the vendor claims ownership or exclusive rights that may be

¹⁵ Texas Business and Commerce Code, Chapter 322

protected from disclosure under the Texas Public Information Act, all submitted proposals are available and open for public inspection after Commissioners Court awards the contract.
The Texas Public Information Act governs disclosure of information obtained from a vendor.

TABLE 11.013 OPENING IFB AND RFP SOLICITATIONS

11.014 Non-Disclosure Agreement

TABLE 11.014 NON-DISCLOSURE AGREEMENTS

IFB	RFP
Not Applicable	In a Non-Disclosure Agreement, members of the evaluation committee agree to keep all information in proposals confidential.
	Before the evaluation of proposals, the Purchasing Office sends the evaluation committee members a Non-Disclosure Agreement and a copy of the Code of Purchasing Ethics. The agreement requires them to keep information in the proposals confidential, to disclose any potential conflict of interest, and to restrict all communications with the proposers during the evaluation process.
	The evaluation committee members must sign and comply with this agreement.

11.015 Initial Evaluation

TABLE 11.015 INITIAL IFB AND RFP EVALUATIONS

	IFB	RFP
bids	Purchasing staff and the User Department evaluate all and recommend the lowest Responsible bid to the amissioners Court for award. They evaluate bids based The relative price; Compliance with Specifications of the Goods and services bid; For heavy equipment, the cost of repair and maintenance; For road construction, the cost of delivery and hauling; Vendor's safety record if the IFB says it will be considered; The vendor's past performance; and	The Purchasing Office supervises the evaluation process performed by the User Department or a multidepartment committee so that the committee conducts the evaluation fairly and consistently and maintains the integrity of the process. Depending on the purchase, Departments like the Planning and Budget Office, Auditor, ITS, or Communications and Records Services may provide additional technical assistance during the evaluation process, if appropriate. The evaluators should be actively involved in project planning, developing the scope of work, and evaluation criteria. Evaluators only use the factors specified in the solicitation when evaluating proposals and apply them
g)	If the vendor is Responsible and has the financial and practical ability to perform the contract.	based on their relative importance. Purchasing staff lead the evaluation team and must:
the	en the lowest priced bid is not the recommended bid, Purchasing staff or User Department must document r justification for not selecting the lowest priced bid.	 a) Tabulate scores; b) Calculate values; and either (1) Coordinate follow-up meetings for Best and Final Offer Negotiations and recommend an award, or
		(2) Discontinue the purchase.
		For high visibility or high dollar value solicitations, the Purchasing Agent may take the recommendations to Commissioners Court and request its approval to negotiate with top-ranked proposers before requesting best and final offers.

11.016 Negotiation

TABLE 11.016 IFB AND RFP NEGOTIATIONS

IFB	RFP
Bids are not negotiated. If the vendor's product or services meet the requirements of the Specification; then, with few exceptions, price is the sole factor determining award.	Evaluators must accord all proposers susceptible of award fair and equitable treatment with respect to any opportunity for discussion and revision of proposals and submittal of a "Best and Final Offer" (BAFO).
	The Purchasing Agent supervises all negotiations. The Purchasing staff coordinate and be present for all discussions with proposers.
	Departments that contact proposers without coordinating with the Purchasing Office may jeopardize the integrity of the negotiation procedures.
	The County may disqualify proposers who violate the Purchasing Office's communication restrictions.
	After the Negotiations are complete, the Purchasing staff request qualified proposers to submit a BAFO to a specified location by a specified date. Based on the Negotiations, the BAFO allows the proposer to:
	a) Modify the initial offer in its proposal;
	b) Update pricing based on any changes resulting from negotiations between User Department and proposer; and
	c) Include any added inducements that improve the overall value of the proposal consistent with the RFP's evaluation plan.
	Still using only the factors specified in the solicitation, Evaluators evaluate BAFOs and apply them based on their relative importance. Purchasing staff lead the evaluation team and must:
	 a) Tabulate scores; b) Calculate values; and either (1) Coordinate follow-up meetings for Best and Final Offer Negotiations and recommend an award, or
	(2) Discontinue the purchase.
	After the evaluation is completed, the Purchasing Office sends an evaluation summary to the Official or County Executive and requests that the Official or County Executive submit a memorandum to the Purchasing Agent stating their concurrence.
	Purchasing submits the recommendation to purchase to Commissioners Court.

11.017 Contract Award

The User Department recommends contract award to the Commissioners Court. The Purchasing Office prepares the agenda request and confirms that the solicitation complied with applicable purchasing laws.

The Purchasing Office maintains a complete contract Master File, and sends electronic copies to the Contractor, the County Clerk, the User Department, the County Attorney, and the Auditor's Office.

TABLE 11.017 IFB AND RFP CONTRACT AWARDS

	IFB	RFP
	he lowest Responsible bid is the basis of the ecommendation for contract award.	The BAFO is the basis of a recommendation for contract award.
B SI B C	efore the Commissioners Court may award a contract to a idder who did not offer the lowest price meeting pecifications, the Purchasing Agent must give each lower idder notice of the proposed award and the ommissioners Court must allow an opportunity to appear efore it and present evidence that it is Responsible. The Commissioners Court may either: Award the contract to the Responsible bidder who submits the lowest and best bid for items purchased under the Purchasing Act or Rejects all bids and directs the Purchasing Agent to publish a new notice if the Goods or services are still needed.	The final contract document incorporates the Goods and services offered in the proposal as modified by the BAFO at the prices confirmed in the BAFO. The County Attorney's office assists in drafting a contract based on the negotiated "deal" resulting from an RFP. The Commissioners Court awards the contract to the Responsible proposer whose proposal is determined to be the lowest evaluated offer resulting from Negotiation, taking into consideration the relative importance of price and other evaluation factors in the RFP. The Commissioners Court approves the contract if acceptable. The County Judge signs it.
b d	two or more Responsible Bidders submit the lowest and est bid in an IFB, the Commissioners Court draws lots to etermine the contract award. The County Judge decides ow to draw lots.	
	the Commissioners Court awards the contract, the ounty Judge signs it.	

SECTION 12. [RESERVED FOR REVERSE AUCTION PROCEDURES]

SECTION 13. STATE PURCHASING PROGRAMS

13.001 Overview and Statutory Authority

There are five types of purchasing programs that allow local governments to purchase Goods and services using contracts previously competed by the State of Texas or other governmental entities.

The Texas Comptroller of Public Accounts Procurement and Support Services (TPASS) manages two of them.

- a) State Contract Purchases. The state has entered into contracts for numerous Goods and services after using Competitive Purchasing Procedures.
 TPASS manages this program for the state.¹⁶
- b) **Texas Multiple Award Schedule** (TXMAS). The County may purchase Goods and services from a schedule of multiple award contracts developed by TPASS. The schedule is adapted from General Services Administration (GSA) Federal Supply Service contracts.¹⁷
- c) The Texas Department of Information Resources (DIR) manages the other three programs and allows local governments to purchase computer technology through DIR from its contracted vendors. The County may purchase computer-related equipment and services through DIR and from its contracted vendors.
 - (1) DBITS. The County may purchase deliverable based IT services through DIR vendors.
 - (2) IT Staffing Services. The County may purchase IT Staffing Services contracts provide for temporary IT staffing augmentation services on a time (hourly) basis through DIR from its IT Staffing Services contracts.¹⁸

13.002 Official Representative

The Purchasing Agent acts for Travis County in all matters related to purchase of Goods and services from a vendor under any contract based on a state purchasing program. Travis County is liable for making payments directly to these vendors.

13.003 State Contract Purchases

The County participates in the purchasing program of TPASS for local governments. The County may purchase Goods and services from Vendors on the same terms and conditions that the state obtained through its Competitive Purchasing Procedures.

The Purchasing Agent either submits Purchase Orders to TPASS under a contract or electronically sends Purchase Orders directly to selected vendors and reports to TPASS on actual purchases in compliance with its regulations.

The Purchasing Agent monitors vendor compliance with all the conditions of delivery and quality of the purchased Goods and services.

The Purchasing Agent signs and delivers all necessary documents for all purchases for the County under this program.

13.004 Texas Multiple Award Schedules (TXMAS) Purchases

The County participates in the purchasing program of TPASS using TXMAS contracts developed from contracts that have been competitively awarded by the federal government or any other governmental entity of any state.

TXMAS contracts include the most favored customer (MFC) pricing and allow the County to negotiate lower prices than offered on the scheduled contract under certain circumstances.

¹⁴ Texas Local Government Code sections 271.081 through 271.083

¹⁵ Texas Government Code section 2155.502

¹⁸ Texas Government Code Interlocal Cooperation Act, Chapter 791

The Purchasing Agent monitors vendor compliance with all the conditions of delivery and quality of the purchased Goods and services.

The Purchasing Agent signs and delivers all necessary documents for purchases for the County under this program.

13.005 DIR Purchases

GoDIRect:

The Purchasing Agent either submits Purchase Orders to DIR under its contract or electronically sends Purchase Orders directly to GoDIRect vendors to purchase computer-related equipment and services.

The Purchasing Agent monitors vendor compliance with all the conditions of delivery and quality of the purchased Goods and services.

The Purchasing Agent signs and delivers all necessary documents for purchases under this program.

DBITS:

Deliverables-Based IT Services (DBITS) are available through DIR vendors for the following services:

- a) Application development,
- b) Application maintenance and support,
- c) Business intelligence (BI) and data warehouse,
- d) Enterprise resource planning (ERP),
- e) Independent verification and validation (IV&V),
- f) Information technology assessments and planning,
- g) Project management,
- h) Service oriented architecture (SOA), and
- Technology upgrade, migration and transformation.

The Purchasing staff submit a statement of work to vendors offering the technology category requested, and negotiate pricing of deliverables and terms and conditions directly with a vendor.

The vendor may begin work only after receiving a statement of work signed by both the County and the vendor, and a Purchase Order issued by the Purchasing Office.

The Purchasing Agent monitors vendor compliance with all the conditions of delivery and quality of the purchased Goods and services.

The Purchasing Agent signs and delivers all necessary documents for purchases under this program.

IT Staffing Services:

Contract staff render services and are paid on an hourly basis. IT Staffing Service contracts do not provide for deliverables-based outsourced systems integration or application development projects.

The Purchasing Agent monitors vendor compliance with all the conditions of delivery and quality of the purchased Goods and services.

The Purchasing Agent signs and delivers all necessary documents for purchases under this program.

13.006 Satisfaction of State Laws Requiring Competitive Bids

Purchases made through the programs described in this section satisfy any state law requiring the County to seek competitive bids for the purchase.

SECTION 14. COOPERATIVE PURCHASING AGREEMENTS

14.001 Overview

Counties can contract directly with other governments to increase their efficiency and effectiveness. The County has numerous interlocal agreements.¹⁹

14.002 Definitions

"Local cooperative organization" means an organization of governments established to provide local government access to contracts with vendors for the purchase of materials, supplies, services, or equipment.

14.003 Official Representative

The Purchasing Agent acts for Travis County at the direction of Commissioners Court in all matters relating to all cooperative purchasing programs, including the purchase of Goods and services from a vendor under any contract. Before recommending any cooperative, the Purchasing Agent researches it.

The Commissioners Court approves an interlocal agreement that states the terms and conditions, including any fee schedules, for purchasing from contracts solicited by its other members, and authorizes one person as the contact to make purchases under the interlocal agreement.

The County is a member of numerous cooperative purchasing programs. Commonly used cooperative purchasing agreements include:

- a) Houston Area Council of Governments (H-GAC),
- b) Texas Association of School Boards (BuyBoard),
- c) The Cooperative Purchasing Network (TCPN),
- d) US Communities,

- e) Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP)
- f) Choice Partners, and
- g) Federal Supply Schedules.

14.004 Procedure

The Purchasing staff assign a contract number to each interlocal agreement to purchase Goods or services that Commissioners Court approves. They enter the interlocal agreement into SAP for tracking and payment purposes. The Purchasing staff add previously-approved interlocal agreements, including revenue-generating interlocal agreements, to SAP on request.

The Purchasing Agent monitors vendor compliance with all the conditions of delivery and the quality of the purchased Goods and services.

14.005 Federal Supply Schedules

County purchases of Goods and services available under federal supply schedules of the United States General Services Administration (to the extent these purchases are permitted by federal law) satisfy the requirement of the County Purchasing Act for the County to seek competitive bids for purchases.²⁰

Under the federal Cooperative Purchasing Program, the County may purchase products, software, and services from:

- a) Contracts awarded under GSA Federal Supply Schedule 70, Information Technology, and
- b) Contracts under the Consolidated (formerly Corporate Contracts) Schedule containing IT special Item numbers.
- c) Contracts awarded under GSA Federal Supply Schedule 84, Total Solutions for Law Enforcement, Security, Facility Management

 $^{^{\}rm 19}$ Texas Government Code Interlocal Cooperation Act, Chapter 791, in particular section 791.025(c)

²⁰ Texas Local Government Code Section 271.103

Systems, Fire, Rescue, Special Purpose Clothing, Marine Craft, and Emergency/Disaster Response.

The County may buy supplies and services directly from all GSA Schedules to facilitate recovery from major disaster or facilitate disaster preparation, response and recovery under the GSA's Disaster Purchasing Program.

14.006 Satisfaction of State Laws Requiring Competitive Bids

Purchases made through these cooperative purchasing agreements, interlocal agreements, and federal supply schedules satisfy any state law requiring the County to seek competitive bids for the purchase.

SECTION 15. EXEMPTIONS TO THE COMPETITIVE PROCUREMENT PROCESS

15.001 Overview

The Purchasing Act requires the County to solicit all purchases over \$50,000 competitively and sets the procedures and standards for Advertisements, competition, and contract award. Commissioners Court may order contracts for certain Goods and services exempt from these procedures and standards.²¹

For similar items that must be purchased in compliance with Chapter 271 of the Texas Local Government Code, the purchase is automatically exempt from its newspaper advertising requirements²² and no order is needed.

15.002 Definitions

"Exempt" and "exemption" mean that the County is not required to comply with the Competitive Purchasing Procedures of the Purchasing Act before entering into the contract to purchase these Goods or services.

15.003 Procedure

The Official or County Executive submits a request (e-mail or memorandum) to the Purchasing Agent requesting an order for an exemption from the Competitive Purchasing Procedures and identifying the basis for the exemption listed in the Purchasing Act which applies.

The request must state specific details and explain why an exemption from the Competitive Purchasing Procedures is appropriate.

When possible, the request should contain the name of the vendor, Goods or services covered by the exemption and the estimated maximum cost and other relevant program information.

The Purchasing Agent submits an agenda request for an order exempting the contract and the Commissioners Court determines whether to grant the exemption.

The Commissioners Court approves an exemption for a specific contract which is effective for the duration of that contract.

If the Commissioners Court grants an exemption order, the Commissioners Court may either authorize the Purchasing Agent to sign a contract for the needed Goods or services when it is prepared or request that the Purchasing Agent return to the Commissioners Court with the contract for approval.

15.004 Bases for Exemptions

Protection of Persons or Public Property

The first three circumstance for which an exemption may be ordered relate to protection of residents of the County and public property.

- a) The first circumstance requires a "public calamity," and an urgent need to relieve citizens from a necessity or an urgent need to preserve property of the County.
- b) The second requires the need to preserve or protect the public health or safety of County residents.
- c) The third requires the need to respond to unforeseen damage to public property.

The Commissioners Court may order a contract for the Items necessary to meet any of these needs exempt.

Personal or Professional Services

The Commissioners Court may order a contract for the services of a particular person exempt.

²¹ Texas Local Government Code section 262.024

²² Texas Local Government Code section 271.056

The Commissioners Court may order a contract for Professional Services from one or more persons or a professional firm exempt.

Day Labor

The Commissioners Court may order a contract for work performed and paid daily as the work progresses exempt for up to 20 working days within any three month period.

Land

The Commissioners Court may order contracts for land and right-of-way exempt but the Purchasing Agent does not handle the Lease or purchase of Real Property. Commissioners Court has directed that the Facilities Management Department, Transportation and Natural Resources and others handle the acquisition and administration of Real Property with the advice of the County Attorney.

For financial compliance, Purchasing enters the lease or real estate purchase into SAP, when provided a Commissioners Court approved agreement.

Sole Source Goods and Services

The Commissioners Court may order a contract for a Good or service that can be obtained from only one source exempt only if the Purchasing Agent provides the Commissioners Court with a signed statement that this Item is only available from one source.

Items that are specifically included as capable of being obtained from one source include:

- a) Items for which competition is impossible due to copyrights, patents, secret processes or monopolies;
- b) films, manuscripts, or books;
- utility services like electric power, gas, water or cable TV; and
- d) captive replacement parts or components for equipment.

When a User Department wants to purchase one of these Items, it must provide the Purchasing Agent with adequate evidence that the item can be obtained from only one source.

The Purchasing Agent then provides the Commissioners Court a signed statement that this Item can be purchased from only one source.

The Commissioners Court then enters the statement in its minutes and may then order the contract for it exempt.

Renewal of Equipment Leases and Equipment Maintenance Contracts

The Commissioners Court may order the first renewal or extension of a Lease or an equipment maintenance contract exempt if:

- a) the Lease or contract has gone through the Competitive Purchasing Procedures within the preceding year; and
- b) the renewal or extension does not exceed one year.

Food Purchases

The Commissioners Court may order a contract for food exempt if it complies with the following sealed Competitive Purchasing Procedures. These purchases are made for Travis County adult and juvenile correctional facilities.

The Food Manager in the Sheriff's Office or in Juvenile Probation or in both maintains a list of all vendors that want to bid on food purchases.

To be added to the list, a vendor must request a Specification package for each category of food on which the vendor wants to bid. This Specification package states the approximate quantity of food required in the specified timeframes, the quality and service level required, and the terms and conditions of the contract.

When applicable, Specifications for food categories require fixed prices for one year.

The Food Manager solicits at least three bids by telephone, written quotation, or electronically for the following categories at the following intervals:

a) Monthly: Produce

- b) Quarterly: Canned Goods, Meat, Groceries
- c) Annually or semi-annually: Dairy Products, Bread

The Food Manager, through the Purchasing Agent, submits the bids to the Commissioners Court with a recommended award of the food purchase contract(s) to the Responsible bidder who submits the lowest and best bid. The Food Manager may also recommend that the Court reject all bids and repeat the bidding procedures if it is determined that rebidding is in the best interest of the County.

The lowest and best bid is determined based either on the overall low bid, or on the line item low bid, whichever is more advantageous to the County.

In recommending the Responsible and lowest and best bid, the Food Manager considers the relative price of the bids, compliance of the products with the Specifications, financial condition of the vendor, ability to perform the contract terms, and past performance with the County.

If any vendor does not provide the volume or quality of food or the timeliness of delivery required by the contract after award, the Food Manager may procure items from the next lowest vendor until:

- a) the Commissioners Court considers termination of the contract if the contract is bid less frequently, or
- b) the end of the timeframe if the contract is bid weekly.

If the Food Manager has maintained documentation on the details that support the removal of a vendor from the list of those who wish to bid and presents it to the Commissioners Court, the Commissioners Court may remove a vendor from the vendor list for the following reasons:

- a) The vendor has not bid in response to three consecutive requests for bids, or
- The vendor has not provided the volume or quality of food or timely deliver as required by the contracts.

The Food Manager encumbers funds for the contracts using a Shopping Cart, and the Purchasing Office issues a Purchase Order.

The Food Manager must maintain a record of all bids solicited, vendors contacted, and the awarded food contracts for one year after expiration of the contract, or until audited by the Auditor, whichever occurs first.

Vehicle and Equipment Repair Contracts

Since 2007, the Commissioners Court has been able to order contracts for vehicle and equipment repairs exempt.

SECTION 16. PURCHASING PROFESSIONAL SERVICES

16.001 Statutory Requirements

Two statutes govern the purchase of Professional Services:

- a) The Professional Services Procurement Act²³ governs Professional Services specifically listed in it, and
- b) The County Purchasing Act²⁴ governs all Professional Services but the Commissioners Court exempts most contracts for Professional Services from complying with that Act.

TABLE 16.001 RFQ AND RFS STATUTORY REQUIREMENTS

disclosures apply to a contract, the following

RFQ: Professional Services Procurement Act	RFS: County Purchasing Act
The Professional Services specifically listed in the Professional Services Procurement Act are the practice of accounting, architecture, landscape architecture, optometry, medicine, land surveying, professional engineering, real estate appraising or professional nursing and include both the licensed professional and those assisting them in their practices.	These are the Professional Services that are not specifically listed in the Professional Services Procurement Act. These services are commonly referred to as professional because they require technical skill and expertise and primarily mental or intellectual labor, rather than physical labor. Personal services must be performed by a particular person and the contract terms cannot allow any substitutions.
County solicitations for these services are called an RFQ.	County solicitations for these services are called an RFS.
Contracts for purchasing these Professional Services must be awarded on the basis of demonstrated competence and qualifications.	The RFS includes suggested selection criteria in addition to demonstrated competence and qualifications.
The Professional Services Procurement Act treats the practices of architecture, land surveying, and professional engineering differently from the other listed professions ("The Three").	
Solicitations for The Three cannot know or consider the price of the services until after their qualifications are evaluated and the rank order has been developed. 16.002 Discretionary contracts	definition annies:

16.002 Discretionary contracts

Professional Services are discretionary contracts. For determination of whether certain ethical

definition applies:

"Discretionary contract" means a contract for more than \$50,000 with Travis County and includes contracts that the Commissioners Court orders exempt from the Competitive Purchasing

²³ Texas Government Code Chapter 2254

²⁴ Texas Local Government Code Chapter 262

Procedures in the Purchasing Act under section 262.024 (a)(4) as a professional service whether it is solicited in compliance with the Professional Procurement Act or through a Request for Services. It does not include contracts solicited through:

- a) an Invitation for Bids (IFB) or a Request for Proposals (RFP),
- b) a legally authorized program that satisfies the state laws requiring the County to seek competitive bids or proposals, including:
 - (1) the state cooperative programs
 - (2) a cooperative purchasing program
 - (3) the Texas Industries for the Blind and Handicapped or
 - (4) an interlocal cooperation agreement.

16.003 Purchasing Procedure

The Purchasing Agent purchases Professional Services using a written solicitation process so that professional firms have a fair and equitable opportunity to do business with the County and the County may engage the best qualified professionals, if financially feasible.

When an Official or County Executive needs Professional Services, they send a request (memorandum or e-mail) for the services to the Purchasing Agent.

The request must include:

- a) Scope of work,
- b) Necessary qualification and experience requirements,
- c) Project description and deliverables,
- d) Time frames,
- e) Budgeted amount and budget line items from which the purchase is funded or an explanation acceptable to the Purchasing Agent about how funding is obtained, and
- f) Suggested professionals.

If requirements and necessary qualifications are not submitted, the Purchasing staff and the User Department jointly develop them.

The User Department follows up the request with entry of a Shopping Cart or funds reservation document into SAP.

Unless there is an urgent need for the services, the Purchasing Agent requests that the Commissioners Court order each contract for Professional Services exempt from the Competitive Purchasing Procedures of the Purchasing Act before selecting and negotiating with any professional firms.

Based on the information provided, in particular the estimated cost, applicable state laws, and other relevant factors, the Purchasing Agent decides whether to use a written solicitation or to solicit the services informally.

Unless the Commissioners Court specifically approves another procedure, all Professional Services anticipated to cost over \$50,000 are solicited with a written solicitation.

Exception: The Commissioners Court authorized the Sheriff to negotiate and execute contracts for nursing in the corrections facilities, instructors for the sheriff's academy, chaplains or the corrections facilities, and prisoner detention services if:

- a) the contractors are selected on the basis of qualifications, and
- b) the contracts are within budget and the County Attorney and the Purchasing Agent review the contracts before execution.

16.004 Advertisement

TABLE 16.004 ADVERTISEMENTS OF RFQ AND RFS

RFQ	RFS
Not legally required.	If PBO has not verified that Commissioners Court has approved the services and placed adequate funding in the budget, after preparing the RFS, the Purchasing Agent asks the Commissioners Court for approval to issue the RFS and publish an Advertisement. The Advertisement of the RFS is generally published once a week, with the first day of publication being 14 days before the date of the response opening. To allow sufficient time to complete responses, Purchasing generally publishes the solicitation on BidSync for 21 days. If needed, advertising time can be extended or decreased.

16.005 Amendment of Solicitation

The Purchasing Agent may extend the response opening date of a solicitation if an error is discovered, or if the nature of the services requires an extension.

The Purchasing Agent may amend a solicitation to clarify its original intent or to correct clerical errors if:

- a) There are questions about the meaning of a substantive requirement or other critical element of the solicitation that indicate the need for an Amendment;
- b) Changes are so insignificant that they are not likely to matter to the firm in determining ability to respond; and
- c) The Amendment does not change the general scope of the solicitation.

The Purchasing Agent determines the number of days between the date of the Amendment and the response opening date based on time needed to respond to the changes.

16.006 Non-Disclosure Agreement

In a Non-Disclosure Agreement, members of the evaluation committee agree to keep all information in a response confidential.

Before the evaluation of responses, the Purchasing Office sends the evaluation committee members a Non-Disclosure Agreement and a copy of the Code of Purchasing Ethics.

The agreement requires them to keep information in the proposal confidential, to disclose any potential conflict of interest, and to restrict all communications with the Respondents during the evaluation process.

The evaluation committee members must sign and comply with this agreement.

16.007 Pre-Response Conference

The Purchasing Agent works with the User Department to decide if a conference is necessary to

ask questions about the proposed contract and its requirements.

If held, Purchasing staff manage this conference and request that the User Department make staff available to answer questions.

16.008 Electronic Response from Vendors

The Purchasing Office encourages vendors to submit their response to solicitations electronically through BidSync, the County's automated on-line response management services, or a successor vendor selected by the Purchasing Agent.

Vendors may sign responses electronically. Vendors may swear the ethics sworn declaration electronically.

All electronic transactions must comply with the Uniform Electronic Transactions Act²⁵ and all other applicable law.

16.009 Receipt of Responses

To ensure identification, security, and confidentiality, the Purchasing Office uses the following procedures when receiving responses:

- a) The Respondent must seal its response. If sent electronically, BidSync locks the response through encryption until the time set for opening in the solicitation.
- b) The Purchasing Agent receives all sealed responses as specified by the solicitation.
- The Purchasing staff use the "Date Stamp Clock" in the Purchasing Office to stamp all responses.
- d) Responses are not accepted after the opening time on the day of response opening. All responses submitted after the opening time are returned unopened to the Respondent with a letter stating that the submitted response arrived after the due time or date.
- e) The Purchasing staff record the name of the firm's representative submitting the response,

- the time and date the response was received and the method of delivery if received by mail, express mail, or courier.
- f) The Purchasing staff keep sealed responses secured and sealed from receipt until the opening date and time.
- g) On rare occasions, responses that are received in the mail, or by other independent carrier, may be inadvertently opened. If this situation occurs, the receiving Employee immediately calls another Employee of the Purchasing Office to act as a witness that the details of the response were not reviewed and the response is resealed by that Employee, and the incident is documented.

These procedures are done in a manner that avoids revealing response information. Publicly receiving sealed proposals and recording the submission of requested responses inhibits both the ability to and the perception that the Purchasing Office is manipulating the receipt of bids.

16.010 Opening of Responses

The Purchasing staff open the sealed responses at the date, time, and place specified in the solicitation. They document the sealed responses and only announce the names of firms submitting responses.

The Purchasing staff open responses to avoid disclosure of contents to competing Respondents and to keep them secret during negotiation.

Except for trade secrets or propriety information for which the Vendor claims ownership or exclusive rights that may be protected from disclosure under the Texas Public Information Act, all submitted responses are available and open for public inspection after the Commissioners Court awards the contract.

The Texas Public Information Act governs disclosure of information obtained from a firm.

²⁵ Texas Business and Commerce Code Chapter 322

16.011 Evaluation

The Purchasing staff supervise the evaluation process performed by the User Department or a multidepartment evaluation committee so that it is conducted fairly and consistently and maintains the integrity of the process.

The evaluators should be actively involved in project planning, developing the scope of work, and evaluation criteria. The focus is on ranking the firms based on such factors as professional qualifications; specialized experience and technical competence for the type of work in the scope; capacity and capability to perform the services; the firm's understanding of the project, risks, challenges and strategy; demonstrated success on similar projects and past performance in terms of cost control, quality and schedule.

Depending on the purchase, Departments like the Planning and Budget Office, Auditor, ITS or Communications and Records Services may provide assistance during the evaluation, if applicable.

Evaluators may use only the evaluation factors specified in the solicitation in evaluating the responses. Purchasing staff lead the evaluation committee and must communicate with all firms; develop evaluation matrix and criteria; tabulate scores; and calculate values.

TABLE 16.011A EVALUATION

Evaluation				
RFQ-others	The Three	RFS		
The RFQ must specify the evaluation factors to be used to determine demonstrated competence and qualifications experience to obtain the best match for the project scope, size, location and other factors stated in the RFQ.		Purchasing staff must also evaluate and score certain criteria, primarily HUB Program related information and pricing.		
Fees may be an evaluation factor. The evaluation committee evaluates the qualifications, experience, fairness, and reasonableness of the fees proposed.	Fees are not an evaluation factor. The evaluation committee evaluates the demonstrated competence, qualifications, experience, and develops a rank order of the Respondents, selecting 3-5 for further consideration.	The User Department or evaluation committee must base its choice on the demonstrated competence, experience, and qualifications of the Respondents, and the reasonableness of the fee proposed for the services.		

TABLE 16.011B NEGOTIATIONS

Negotiation				
RFQ-others	The Three	RFS		
For high visibility or high dollar value purchases, the Purchasing Agent may present recommendations to Commissioners Court and request its approval to negotiate with top ranked firm(s) before requesting best and final offers. Purchasing staff either coordinate follow-up meetings for best fee Negotiations or discontinue the process.	For high visibility or high dollar value purchases, the Purchasing Agent may present the recommendation of the highest ranked Respondents to Commissioners Court and request authority to negotiate fees in rank order. The Purchasing Agent and County Executive or Official enter into negotiations with the highest ranked Respondent. If the County is unable to negotiate a satisfactory contract with the Respondent ranked as most highly qualified, the County formally ends negotiations with that Respondent. The Respondent ranked as the next most highly qualified is then asked to negotiate. Negotiations are continued in this sequence until a contract is finalized.	For high visibility or high dollar value purchases, the Purchasing Agent may present the recommendations to Commissioners Court and request its approval to negotiate with top-ranked firm(s) before requesting best and final offers. Purchasing staff either coordinate follow-up meetings for best fee Negotiations or discontinue the process. Best and Final Offer (BAFO): Evaluators must accord all firms fair and equitable treatment with any opportunity for discussion and revision of responses and submittal of a BAFO. The Purchasing Agent supervises all Negotiations with Respondents. The Purchasing staff coordinate and should be present for all discussions with firms. User Departments that contact firms without coordinating with the Purchasing Agent risk jeopardizing the integrity of the Negotiation process. During Negotiations, Purchasing staff may request that qualified Respondents submit a BAFO to a specified location by a specified date. Based on the Negotiations, the BAFO allows the firm to: a) Modify the initial offer; b) Update the response based on any changes the County has made; and c) Include any added inducements that may improve the overall score.		

16.012 Recommendation for Award

The Purchasing Agent works with the Official or County Executive to develop the recommendation for award and present it for approval by Commissioners Court.

16.013 Written Contract

Before any services are rendered, the County Attorney, in consultation with the Purchasing Agent and User Department, prepares a written contract for Professional Services.

The Purchasing Agent approves and signs the contract if it is for under \$50,000. The Commissioners Court approves and signs the contract if it is for over \$50,000.

16.014 Vendor Pools for Professionals Other than the Three

If, as a result of a solicitation, the County enters into contracts with more than one qualified professional firm providing the same type of Professional Services, these professionals form a pool and any one of these firms may provide their Professional Services as needed.

When a pool has been formed, the User Department and Purchasing staff must ensure that an appropriate solicitation is distributed at least once every four years so that the County may enter into contracts with newly qualified professionals providing the same type of Professional Services and they may be added to the pool.

Pools have been used mainly for geotechnical testing services and brokerage firms. Other services may be considered for formation of a pool from time to time, if needed.

16.015 Vendor "Pools" for the Three

Pre-Qualified List

The County may establish a pre-qualified list of architectural, engineering or land surveying firms that are initially selected through an RFQ solicitation on the basis of demonstrated competence and qualifications as the most highly qualified firms to provide architectural, engineering or land surveying services for small projects as the need arises.

These firms may be used to assist the County to:

- a) Obtain architectural, engineering or land surveying services for small projects (under \$100,000 in fees),
- b) Respond to health and safety issues that require immediate attention,
- c) Expedite unanticipated work requests for architectural, engineering or land surveying services as they arise, and
- Reduce the cost and time required to solicit services and award contracts for multiple small projects.

Project Selection

When the County needs architectural, engineering or land surveying firms, the County determines which of the firms on the pre-qualified list is the most highly qualified to perform the services needed by that project based on their demonstrated competence and qualifications.

The contract with the firm selected for the project is modified to include the requirements and pricing and all other relevant factors related to the project.

SECTION 17. PURCHASING CONSTRUCTION SERVICES

17.001 Overview

This section is based on the requirements applicable to County in Texas Government Code chapter 2269, Contracting and Delivery Procedures for Construction Projects ("Chapter 2269"). Chapter 2269 prevails over any other law relating to a public work contract except for a project that receives money from a state or federal highway fund and except for a conflicting statutory provision related to contracting with HUBs, if any.

This section is divided into 8 parts. The first part lists the general requirements that apply to all construction projects. Each of the other 7 parts describes a different delivery method for construction projects that may be limited in the type of construction for which it may be used, the way the services may be solicited, and the manner in which they may be performed.

The section applies to the following activities: constructing, altering, repairing, maintaining, renovating, and remediating.

The section applies to the following types of projects:

- a) public works which include a public building or an associated structure, a facility, and any other structural improvement to real property, including an electric utility structure, and
- civil works which include a highway, road, street, bridge, underground utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or a building or structure that is incidental to a civil engineering project.

17.002 Selection of Appropriate Construction Delivery Method

When the Purchasing Agent considers using a delivery method authorized by Chapter 2269 other than competitive bidding for a construction contract, before advertising, the Purchasing Agent must determine which method provides the Best Value for the County. Before beginning a construction project, User Departments and Purchasing staff should collaboratively compare construction project delivery methods based on project characteristics.

Texas law currently provides for choosing among seven delivery methods for construction projects depending upon the type and the circumstances of the construction. See Part 8 Design-Build for Civil Works for factors that must be considered in the comparison before that delivery method may be selected. The Comparison of Construction Delivery Methods chart can help guide delivery method selection. For example, if the project needs to be done quickly, Design-Build may be the best option. If the funding capacity requires keeping a cap on increases in time or the contract price, then the better choices may be either Design-Build or Construction Manager at Risk. In either case. Design-Bid-Build would be the least favorable method.

17.003 Comparison of Construction Delivery Methods

The following chart lists the seven delivery methods in Chapter 2269. It suggests projects for which each might be used and possible advantages and disadvantages. These listed advantages and disadvantages are based on general industry experience with the given project delivery method. Because each project is unique and carries unique challenges, the listed advantage or disadvantage is neither guaranteed nor necessarily applicable.

TABLE 17.003 COMPARISON OF CONSTRUCTION DELIVER METHODS

Competitive Bids	Use when: Can precisely, objectively, and adequately describe work needed; available from more than one Vendor.
(Invitation for Competitive Bid)	Advantages: Solicitation is routine; One bid package for construction; Award to lowest Responsible bidder offering services as specified; Understood by all participants—County, architect, Vendors; Easier for County to manage this linear process.
(also called Design-Bid- Build)	Disadvantages: Construction contractor potentially an adversary of architect/engineer, less owner control due to division of roles and accountability; architect may lack knowledge of latest construction techniques and market needed for accurate cost estimating; Low bid solicitation likely to increase costly change orders; County resources needed to manage project; County must "referee" disagreements; Adequate specifications difficult to develop; Less flexibility, no negotiation allowed. No opportunity for early contractor input.
Competitive Sealed	Use when: Technical or complex facility with numerous features; need an innovative solution for unique function.
Proposal	Advantages: Vendors have opportunity to offer innovative solutions; customized proposals, different approaches to same need; may get unexpected benefits for no additional cost; able to negotiate for Best Value for County; select Vendor based on stated criteria and priorities in addition to cost.
	Disadvantages: Time needed to evaluate may be greater; not suited to time-sensitive projects; unable seek Vendor's knowledge in advance; evaluation more complex; selection difficult to defend if it becomes subjective.
Job Order Contracts	Use when: Numerous demands for maintenance, repair, alteration, renovation, remediation or minor construction using for similar type services when delivery times, type and quantities of work are indefinite.
	Advantages: More flexibility on multiple small projects; pricing set competitively and "fixed" for contract term; expedites small projects by reducing number of solicitations.
	Disadvantages: Breaking projects down into numerous phases may result in higher project costs; Not suited for large projects.
Construction Manager Agent	Use when: Insufficient resources or expertise at County to manage complex project or large number of concurrent projects; County wants to hold all subcontractor and vendor contracts.
	Advantages: Truly on County's side as its fiduciary; selected on demonstrated competence and qualifications as manager; qualified consultative and administrative services with knowledge of current costs and trends available during design and construction; more predictable and manageable results through a collaborative team; increased opportunity for local participation of vendors; reduction of County's risk; less time and money spent due to fewer change orders; County holds subcontracts; Can fast-track by phasing bid packages; More County control.
	Disadvantages: Multiple contracts held by County can create administrative challenges; Potential challenge to determine who is "at fault" if project with multiple prime contracts is delivered late.
Construction Manager at Risk	Use when: Additional project management expertise is desired; want to get a blend of assessing pricing, scheduling and qualifications while limiting the County's risk; Larger projects, new or renovation, that are schedule-sensitive, difficult to define, or subject to change.
	Advantages: Single point of accountability (CMAR signs contracts with all subs); construction firm selected on qualifications; Guaranteed Maximum Price assures that County project is constructed on time with no price increases; qualified persons who know construction costs and trends

provide pre-construction services; more predictable and manageable results through a collaboration; more opportunity for local participation of vendors, collaborative effort reduces risks for County; Less time and money spent due to fewer change orders; can fast-track by phasing bid packages; more County control in selecting subcontractors of CMAR

Disadvantages: Potential for less competition because of lack of qualified Construction Managers; the effect of being an extension of the County's staff is limited because CMAR is "at risk" for cost increases; CMAR holds all subcontracts.

Construction Design Build (Public Works)

Use when: Want one vendor (architect or construction firm) responsible for both design and construction; the architect and construction firm demonstrate a depth of experience in working together and a proven record of performance in similar projects; best suited for projects that are highly schedule-driven.

Advantages: Speed of delivery because design occurs at the same time as construction; accuracy of estimates enhanced through early involvement of construction arm; fewer change orders saves time and expense; fosters a "team concept" to achieve cost and schedule savings and enhance overall value to County; a single point of accountability for entire project, both design and construction; County can select team based on qualifications; active County participation contributes to a better end product; early and continued architect-construction contractor collaboration leads to reduced litigation.

Disadvantages: Less County control over final design and possibly less design influence by architect; possibly reduced architect-end user interaction; fewer checks and balances between architect and construction contractor; must take care to balance quality with cost; requires County's expertise.

Construction Design Build (Civil Works)

Use when: Want one vendor (engineer or construction firm) responsible for both design and construction; the engineer and construction firm demonstrate a depth of experience in working together and a proven record of performance in similar project.

Advantages: Speed of delivery because is design occurs at the same time as construction; accuracy of estimates enhanced through early involvement of construction arm; fewer change orders saves time and expense; fosters a "team concept," to achieve cost and schedule savings and enhance overall value to County; a single point of accountability for entire project, both design and construction; County can select team based on qualifications; active County participation contributes to a better end product; early and continued engineer-construction contractor collaboration leads to reduced litigation.

Disadvantages: Less County control over final design and possibly less design influence by engineer; possibly reduced engineer-end user interaction; fewer checks and balances between engineer and construction contractor; must take care to balance quality with cost; requires County's expertise; Design Build-Civil works limited to 6 per fiscal year and to a single integrated project at a single location; County responsible for all risks and costs due to scope changes, differing site conditions, regulatory permitting, and force majeure events. County cannot disclose or use any design work contained in unsuccessful proposal unless County pays stipend of .5% of the contract amount stated in RFP to Respondent.

17.004 Definitions

In this section,

"Construction" includes constructing, building, remodeling, remediating, extending, rehabilitating, maintaining, repairing, altering, or demolishing;

"Legal entity" includes a sole proprietorship, partnership, corporation, or any other legal entity;

"Solicitation document" may mean request for bids, request for proposals, or request for qualifications, as applicable;

"Response" may mean the bid, the proposal, the qualifications, and the offer, as applicable.

County is adopting these rules necessary to implement chapter 2269.

Commissioners Court may delegate its authority under Chapter 2269 regarding an action authorized or required by it to a designated representative, committee, or other person if it provides notice of the delegation, the limits of the authority delegated, and the name or title of each person designated by rule or in the request for bids, proposals, or qualifications or in an amendment to the Solicitation document.

PART 1. County Procedures, Legal Requirements and Authority for All Construction Projects

17.005 Overview

County must comply with the requirements in Part 1 when entering into and performing public works contracts and civil works contracts, no matter which method it selects.

The County may only use Qualified Architects and Qualified Engineers to provide professional services for Construction projects. If the person providing these professional services on a project is not a full-time County Employee, the County must select the person based on demonstrated competence and qualifications as provided in section 16 Purchasing Professional Services of this Guide based on the process applicable to The Three.

17.006 Attributes of Each Delivery Method, Priorities, and Project Characteristics

The User Department and Purchasing staff should select the construction project delivery method collaboratively. Because multiple considerations are involved, the User Department and Purchasing staff need to establish priorities and weigh criteria accordingly. This decision involves tradeoffs between the different project characteristics (cost, schedule, and quality). For example, if construction of jail space needs to be completed as soon as possible, limited time may be the decision driver and Design-Build may be the best choice. Designing a complex bridge may require the knowledge and experience of the construction contractor and Construction Manager at Risk may be the best choice.

The Purchasing staff should consider the capability and capacity of the User Department when assessing the potential benefits of each construction project delivery method. For example, a higher level of depth, experience, and competence is required of the County with a Design-Build contract than with Design-Bid-Build or Construction Manager at Risk because, the contracted architect or engineer functions as a guide through the purchasing and

construction process with the latter two. The County may consider employing a third party professional project manager or construction manager to support or supplement staff.

One common complaint about the Design-Bid-Build method is the perception that the lowest bidder may be incompetent, unqualified, or expecting to earn its profit through contract changes and claims. Minimum qualifications, thorough responsibility evaluations, and client reference surveys help ensure award to competent and Responsible contractors. The County uses Best Value analysis for Design-Bid-Build contracts to reduce risks.

17.007 Written Memorandum

The Official or County Executive sends a written request (memorandum or email) to the Purchasing Agent as the initial purchase request for Construction services. The request must include the budget line items from which the purchase is funded or an explanation about how funding is obtained. The Purchasing Office does not begin a solicitation unless the appropriate budget line item includes sufficient unencumbered funds for the project or the Planning and Budget Office verifies that funds are available through budget transfers. Purchasing Staff coordinate with User Department to determine the most appropriate delivery method.

The User Department sends an electronic copy of the technical specifications with the memorandum to assist in developing the project manual. The User Department must allow the Purchasing Office staff at least seven calendar days to develop the solicitation.

Before Purchasing staff distribute the project manual and plans and post them on BidSync, the Purchasing Agent reviews and approves the specifications and General Requirements for compliance with Chapter 2269 and the County Attorney reviews them for legal issues.

During this time, Purchasing staff also develop a Project Purchasing Schedule that details the milestones of the solicitation, including dates and times for the selection of delivery method, if not previously completed, a pre-response conference, receipt and opening of responses, pre-award conference, if applicable, and post-award conference.

17.008 Solicitation Notice

The Purchasing Office publishes the notice for the solicitation, which must include the following:

- a) Time and place for submitting responses;
- b) Time and place of response opening;
- c) Location at which the solicitation documents, plans, specifications, or other data may be examined without charge by all potential Respondents.

If desired, the notice may also include the following:

- a) Description of work;
- The location at which plans and specifications may be obtained and the amount of the deposit required;
- c) The County's goal for HUB contractor and subcontractor participation;
- d) The method of payment. (If payment is by certificates of obligation, the notice must state either that the Respondent must accept certificates, or that the Respondent must elect to accept certificates or assign them to a financial institution with which County has made an arrangement.)

At least two weeks before the date for submitting responses, County must publish the Advertisement of a solicitation at least once each week for at least two weeks.

To ensure Respondents have sufficient time to complete and return their responses, Purchasing generally posts the notice and solicitation document for 21 days in BidSync. If necessary, advertising time can be extended or decreased, but must be at least two weeks.

Anyone who submits a response to a solicitation for services by County must seal the response before delivering it.

17.009 Pre-Response Conference

At the conference, Purchasing staff provide detailed information on the requirements of the solicitation so that the potential Respondents comply with purchasing procedures and the User Department provides technical information to ensure compliance with technical standards.

Purchasing staff schedule a conference for those wishing to submit a response to the solicitation to allow them to ask questions about the proposed contract and its specifications.

During the conference, Purchasing staff assist in conducting the conference by doing the following:

- a) Have all attendees sign the attendance roster.
- b) Provide a detailed agenda which:
 - Provides a brief introduction of the project title, scope of work, and performance period.
 - (2) Indicates whether there have been any amendments issued, and if so, provides all attendees and project document holders with a copy.
 - (3) Discusses the Purchasing Office role in the purchasing and administration.
 - (4) Establishes a "cut-off" date for questions and requests for clarifications, as well as a final date for issuance of amendments.
 - (5) Have the project's Qualified Engineer, Qualified Architect or project manager discuss the specifics of the project, including review of the plans and specifications, allowing time for a question-and-answer session.
 - (6) Discusses the HUB requirements as outlined in the appropriate section of the project manual.
 - (7) Discusses the Travis County Better Builder® Program requirements, if the project has been designated a Travis County Better Builder® Project.
- c) After the conference, the Purchasing Office staff assists in conducting the conference by doing the following:

- Determine any issues discussed during the conference that require issuance of an amendment.
- (2) Have the User Department provide Purchasing with changes to the technical documents (i.e., changes or additions to the plans and/or specifications).
- (3) Record the minutes of the meeting and distribute them to all attendees.
- (4) The Purchasing Office staff prepare and distribute any needed amendments to all attendees and project document holders. The Purchasing Agent may extend the date specified in the notice if needed. The Purchasing Office will determine the number of days between the date of the amendment and the opening date specified in the notice based on time needed to respond to the changes.

17.010 Electronic Response from Vendors

The Purchasing Office encourages vendors to submit their responses to solicitations electronically through BidSync currently.

Vendors may sign responses electronically. Vendors may swear the ethics sworn declaration electronically.

All electronic transactions must comply with the Uniform Electronic Transactions Act in Chapter 322 of the Texas Business and Commerce Code and all other applicable law.

17.011 Receipt of Competitive Solicitation Responses

The Purchasing staff comply with following procedures when receiving solicitation responses for all construction purchases, including those consisting of more than one solicitation phase (for example, an RFQ followed by an IFB):

a) The Purchasing Office receives all responses as specified by the solicitation.

- b) Responses are not accepted after the opening time on the day of response opening. The Purchasing staff return all responses offered after the opening time unopened to the Respondent with a letter from the Purchasing Agent notifying the Respondent that the submitted response arrived after the due date and time.
- c) The Purchasing staff record the name of the vendor submitting the response, as well as the time and date the Respondent submitted response. If the Purchasing Office receives a response by mail, express mail, or courier, Purchasing staff reflect the method of delivery in the record.
- d) After the Purchasing Office receives the responses, Purchasing staff provide a secure place to hold the responses until the opening time and date. The responses must be received sealed and remain sealed until the Purchasing Office opens them in a public forum on the advertised date and time.
- e) On occasion, Purchasing staff may inadvertently open responses that are received in the mail or by some other independent carrier. If this situation occurs, another Employee of the Purchasing Office is immediately called to act as a witness that the Purchasing Office staff did not review the details of the response, especially the price, re-seal the response, and document the incident.

The Purchasing staff undertake these procedures in a manner that precludes any perception of favoritism and avoids revealing prices or any response information. Publicly receiving sealed responses and recording the submission of requested responses ensures that the Purchasing Office is not, and is not perceived as, manipulating the receipt of responses.

17.012 Public Opening of Solicitation Responses

The Purchasing Office publicly opens and documents sealed solicitation responses on the date, time and place specified in the notice.

- a) Preliminary response tabulations, if applicable, are provided to the public upon request.
- b) The Purchasing Office and the User Department determine who must create the response tabulation. If it is the User Department, then the User Department provides a copy to the Purchasing Office for distribution to the Respondents and the general public.
- c) For those responses that contain numerous line items (e.g., bids), a tabulation that includes the total response amount, excluding individual line item amounts per Respondent, can be provided immediately after response opening.
- d) Requests for an all-inclusive response tabulation are honored after the tabulation is completed.

The Purchasing Agent provides a copy of the allinclusive response tabulation to the Commissioners Court with the contract award package.

For bids, after a bid has been opened, a bid may not be changed to correct an error in the bid price.

In cases of discrepancy between a price written in words and a price written in numerals, the price written in words governs.

If a conflict between the unit price and total contract amount or price exists, the unit price governs.

17.013 Evaluation of Responses

The Purchasing Office evaluates all responses to a competitive bidding solicitation with assistance from the User Department. They jointly develop a recommendation for award for presentation to the Commissioners Court. The evaluation of responses is based on the following factors:

- The lowest proposed price among the responses.
- b) The compliance of goods and services offered with specifications; and
- c) Whether the vendor is Responsible, including:
 - (1) The vendor's past performance, and
 - (2) The vendor's financial and practical ability to perform the contract,
- d) The vendor's safety record based on the definition and criteria that Commissioners Court has adopted if the definition and criteria of safety are stated in the solicitation,

For competitive bids, the User Department and the Purchasing Office must perform a joint review of the bid. If the lowest-priced bid is not provided by the lowest Responsible bidder, Purchasing staff must provide the Commissioners Court clear justification for a recommendation not selecting the lowest-priced bidder. The User Department must support the recommendation with clear and concise documentation.

For delivery methods other than competitive bidding, Purchasing staff evaluate all responses to solicitations with assistance from the User Department. They jointly develop a recommendation to Commissioners Court for contract negotiation and award.

The evaluation of responses must be based on the selection criteria in the solicitation document and the weighted value for those criteria and the ranking evaluation of the Respondent. The selection criteria must comply with those required in Chapter 2269 for the delivery method selected and the function to be performed within that delivery method. For professional services, this is usually demonstrated competence and qualifications and for Construction services, this is usually Best Value for the County.

The Purchasing staff forward a complete response packet to the Official or County Executive for review and award recommendation. They submit the award recommendation and any other documentation from the User Department, with the agenda request to justify the award recommendation. The Purchasing staff place the item on the Commissioners Court's agenda.

For other solicitation responses, the procedures in the solicitation documents govern evaluation and award. In each case, the procedures must comply with the requirements of Chapter 2269, Texas Government Code.

17.014 Basis for Contract Award

In awarding any contract under Chapter 2269, County may consider:

- a) the price;
- b) the Respondent's experience and reputation;
- c) the quality of the Respondent's Goods or services;
- d) the impact on the County's ability to comply with its rules and procedures relating to HUBs;
- e) the Respondent's safety record;
- f) the Respondent's proposed personnel;
- g) whether the Respondent's financial capability is appropriate to the size and scope of the project; and
- h) any other relevant factor specifically listed in the solicitation document.

In awarding any contract under Chapter 2269, County must consider and apply any existing rules, laws applicable to local governments, including any criteria, related to the use of HUBs, women, minority, small, or disadvantaged businesses.

The Commissioners Court must also base its selection among Respondents on criteria applicable to the particular delivery method used.

County must publish in the solicitation document:

 a) the criteria that will be used to evaluate the Respondents, and b) the applicable weighted value for each criterion.

When County is engaged in the following activities under Chapter 2269; procuring goods or services, awarding a contract, or overseeing procurement or construction for a public work or public improvement or civil work:

- a) County may not consider whether a person is a member of or has another relationship with any organization; and must ensure that its solicitation documents and any subsequent contract do not deny or diminish the right of a person to work because of the person's membership or other relationship to an organization.
- b) County must document the basis of its selection and must make the evaluations public within seven (7) calendar days after the date the contract is awarded.

17.015 Consideration of Safety Records

When determining whether a Respondent is Responsible, the County may consider the safety record of the Respondent, of the vendor represented by the Respondent, or of anyone acting for the vendor if:

- a) The safety record is based on the written definitions and criteria for accurately determining the safety record of a Respondent that the Commissioners Court has adopted ²⁶,
- b) The solicitation document states that the County considers the safety record of the Respondent and the definitions and criteria,
- The solicitation document includes a Safety Record Questionnaire,
- d) The definitions and criteria are applied equitably.

The safety record includes compliance with requirements for the safety of the environment.

The County bases its consideration of a Respondent's safety record on the following written definitions:

- a) "Respondent" includes the firm, corporation, partnership or institution represented by the Respondent; or anyone acting for that firm, corporation, partnership, or institution.
- b) "Environmental protection agencies" include the U.S. Army Corps of Engineers (USACOE), the U.S. Fish and Wildlife Service (USFWS), the Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ) and its past associated agency, the Texas Natural Resources Conservation Commission (TNRCC), the Texas Department of Health, the Texas Parks and Wildlife Department (TPWD), the Structural Pest Control Board (SPCB), agencies of local governments that enforce environmental protection laws or regulations, and similar regulatory agencies of other states of the United States.
- "Citations" include notice of violation, notice of c) enforcement, suspension/revocations of state or federal licenses or registrations, fines assessed pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, and judicial final judgments. Notice of Violations and Notice of Enforcement received from TCEQ must include those classified as major violations and moderate violations under TCEQ's regulations for documentation of Compliance History, 30 TAC, Chapter 60.2 (c) (1) and (2).

The criteria for evaluating the safety record of a Respondent are as follows:

a) If the Respondent reveals more than two (2) cases in which final orders have been entered by the Occupational Safety and Health Review Commission (OSHRC) against the Respondent for serious violations of OSHA regulations within the past three (3) years, County will, at its discretion, determine whether to disqualify the Respondent.

²⁶ Local Government Code 271.0275

- b) If the Respondent reveals more than one (1) case in which Respondent has received a Citation from an environmental protection agency for violations within the past five (5) years, County will, at its discretion, determine whether to disqualify the Respondent.
- c) If the Respondent reveals that the Respondent has been convicted of a criminal offense within the past ten (10) years which resulted in serious bodily harm or death, County will determine whether to disqualify the Respondent.

17.016 Contract Award

The Purchasing Agent and the Official or County Executive recommend contract award to the Commissioners Court.

For competitive bids, the Court:

- a) Awards the contract to the lowest-priced Responsible Bidder; or
- b) Rejects all bids and publishes a new notice if the construction project is still needed.

For competitive bids, if there are more than one lowest Responsible Bidders who submit the lowest-priced Bid, the Commissioners Court decides between them by drawing lots in a manner prescribed by the County Judge.

For competitive Bids, a contract may not be awarded to a Bidder who is not the lowest dollar Bidder meeting Specifications unless, before the award, the County gives each lower Bidder notice of the proposed award and an opportunity to appear before the Commissioners Court to present evidence about its Responsibility. After award, the County Judge signs the contract for the County and the Purchasing Agent returns the Bid Bonds of any vendor that was not awarded a contract.

For solicitation responses other than competitive Bids, award is made in compliance with the procedures in this section and in the Solicitation document if they comply with Chapter 2269.

The Purchasing Office maintains the contract.

After the Commissioners Court approves the contract, Purchasing staff provide copies electronically to the:

- a) Contractor
- b) County Clerk,
- c) User Department,
- d) Auditor's Office, and
- e) County Attorney.

A letter accompanies the contractor's copy of the contract. The letter lists the contractual requirements for the contractor to submit various documents, and the time period within which these documents must be submitted. For example, the "Required Documents" may include Payment Bonds, Performance Bonds, HUB documentation, certain County Better Builder® **Program** documentation, and insurance certificates within ten calendar days after the contractor receives the letter.

- Unless otherwise indicated, the letter also states that Notice-to-Proceed is not issued unless the contractor submits the Required Documents within the specified time period.
- b) If the contractor does not submit the Required Documents within the specified time, the County has the option of retaining the bid security (bond or cashier's check) and terminating the contract for default.

17.017 Post Award and Pre-Construction Conference

The User Department schedules the Post-Award and Pre-Construction Conference and invites appropriate Purchasing Staff. The User Department must make all technical presentations and Purchasing staff ensure that all applicable legal and purchasing procedures are followed.

The Purchasing staff participate in the conference by:

a) Explaining their involvement in the project;

- Discussing briefly the contract requirements and any other pertinent information about the project.
- Establishing dates for submissions of all Documents required throughout the project, such as material submittals, progress reports, payrolls (when applicable);
- d) Receiving Required Documents from the contractor, if not previously provided.

The User Department technical representative provides a thorough synopsis of project requirements and any County policies with which the contractor must comply.

The Purchasing staff work with the User Department on the timing of the issuance of the Notice-To-Proceed (NTP). After Purchasing receives all of the Required Documents, the User Department determines when the NTP is issued. The NTP is not issued until all Required Documents have been received, reviewed, and verified with the appropriate surety or insurance agency. If all is in order, Purchasing issues the NTP.

17.018 Bonding

No bonds are required for Construction projects that cost less than \$25,000.

For public works and civil works projects, Letters of Credit may not be substituted for any type of bond (Bid Bonds or Performance Bonds or Payment Bonds) if the cost of the project exceeds \$25,000.

Any Performance Bond or Payment Bond that is furnished by a contractor in an attempt to comply with the requirements of Texas Government Code, Chapter 2253 is construed as if it, in fact, conforms to the requirements of that chapter in relation to the rights created and limitations on the bonds and remedies provided.

A bond required under this section must clearly and prominently display on the bond or on an attachment to the bond:

- The name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or
- b) The toll-free telephone number maintained by the Texas Department of Insurance under Texas Insurance Code²⁷, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.

Bid Bonds are generally not legally required from any Respondent whose wage rates are subject to regulation by a state agency. However, Bid Bonds may be required with all other responses for a contract over \$50,000. If the Purchasing Agent decides that a Bid Bond is required for a particular response, the Solicitation document states that.

The amount of the Bid Bond is usually 5% of the contract price.

The Bid Bond may be in the form of:

- a) A cashier's check,
- b) A certified check,
- A surety bond or a blanket bond purchased from a vendor company chartered or authorized to do business in Texas; or
- d) An irrevocable letter of credit issued by a financial institution that is subject to Texas laws and entered on the list of approved sureties maintained by the US Department of the Treasury (unless the contract price is over \$25,000).

²⁷ Texas Insurance Code Chapter 521

Performance and Payment Bonds

All Performance Bonds and all Payment Bonds must be:

- a) Payable to Travis County, Texas,
- b) In the full amount of the contract sum,
- c) Executed by a corporate surety or sureties in compliance with the Insurance Code, and
- d) In a form approved by the County Attorney.

For all contracts for the Construction of a public work or the completion of any public work that exceed \$100,000, the contractor must execute a Performance Bond before beginning work. In addition to these Performance Bond requirements above, Performance Bonds must be:

- a) Conditioned on faithful performance of the work in compliance with the plans, specifications, and contract documents,
- b) Solely for the protection of Travis County, Texas,

For all contracts in excess of \$25,000 for the Construction of a public work or the completion of any public work, the contractor must execute a Payment Bond before beginning work.

- a) The Payment Bond must be solely for the protection and use of Payment Bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply labor or material for a public work,
- b) Payment Bonds must be effective during the warranty period. If there is no warranty, Payment Bonds must be effective from beginning of performance until the end of the fourth month after all work for the project is completed or until releases are obtained from all subcontractors and materialmen.

The contractor must provide Payment Bonds and Performance Bonds within ten calendar days after the contractor executes the contract. These are reviewed by Purchasing staff and, originals are maintained in the Purchasing Office. Copies are provided to the User Department upon request.

The County may not require a contractor for any public work project to obtain a surety bond from any specific insurance or surety company, agent, or broker.

17.019 Independent Services for Determination of Acceptance

The County must provide or contract for the following Professional Services necessary for acceptance of a facility or an improvement to real property by the County independently of the contractor:

- a) construction manager-at-risk,
- b) design-build firm:
- c) construction materials engineering,
- d) testing, and inspection services, and
- e) verification testing services.

The County must select the professional services provider of these services for which it contracts on the basis of demonstrated competence and qualifications as provided for professionals other than The Three listed in the Professional Services Procurement Act in section 16 Professional Services of this Guide.

PART 2. Competitive Bidding Method

"Competitive Bidding" is a solicitation method by which the County contracts with a contractor for the Construction of a facility by awarding the contract to the lowest Responsible Bidder.

In addition to these procedures in Part 2, the project must comply with all procedures in Part 1 of this section.

17.020 Solicitation Procedures

A County may contract for the Construction of a facility only after the County:

- a) advertises for bids for the contract.
- b) receives competitive bids, and

c) awards the contract to the lowest Responsible Bidder.

The County must select or designate a Qualified Architect or Qualified Engineer to prepare the construction documents required for a project to be awarded by a competitive solicitation.

The County must prepare a request for competitive solicitation that includes construction documents, estimated budget, project scope, estimated project completion date, notice that the safety record of a Respondent may be considered in determining the Responsibility of the Respondent²⁸ and other information that a contractor may require to submit a response.

The County must receive, publicly open, and read aloud the names of the respondents and their price responses. The Purchasing staff open responses at a public meeting²⁹ usually in the County Purchasing Office.

After a response has been opened, the response may not be changed to correct an error³⁰ in the response price.

17.021 Clarification Discussion with Low Bidder

For competitive bids, on rare occasions a pre-award conference may be held before contract award to make sure the vendor understands all the requirements of the project manual and plans. The pre-award conference ensures, to the greatest extent practical, the successful performance and completion of the project.

A joint determination by the Purchasing Office and the project manager is made about the necessity of a clarification discussion.

- The Purchasing staff schedule the discussion, prepares the agenda, and conducts the discussion.
- b) The project manager makes sure that the vendor has a clear understanding of the project's technical requirements and that the

solicitation Response covers all requirements. The project manager addresses any issues or problems with the project documents or design.

Pre-award conferences are normally reserved for more complex and complicated construction projects or in some instances, for it is the vendor's first construction project with the County.

A Respondent may withdraw a response due to a material mistake³¹ in the response.

The County may reject any and all Responses.³²

Within seven calendar days after the date the contract is awarded, the County must document the basis of its selection and make the evaluations public.

PART 3. Competitive Sealed Proposal Method

"Competitive Sealed Proposals" is a solicitation method by which County requests proposals, ranks the Respondents, negotiates as prescribed, and then contracts for the Construction of a facility with a general contractor that is a legal entity that assumes the risk.

In addition to these procedures in Part 3, the project must comply with all procedures in Part 1 of this section.

County follows the procedures in this Part in selecting a contractor through competitive sealed proposals.

County must select or designate a Qualified Architect or Qualified Engineer to prepare construction documents for the project.

County must prepare a request for competitive sealed proposals that includes construction documents, selection criteria and the weighted value for each criterion, estimated budget, project scope, estimated project completion date, notice that the safety record of a Respondent may be considered in determining the responsibility of the

²⁸ Local Government Code 271.0275

²⁹ Local Government Code 271.026(a)

³⁰ Local Government Code 271.026(a)

³¹ Local Government Code 271.026(b)

³² Local Government Code 271.027(a)

Respondent and other information that a contractor may require to respond to the request.

County must receive, publicly open, and read aloud the names of the Respondents and any monetary proposals made by the Respondents.

Within 45 calendar days after the date on which the proposals are opened, the County must evaluate and rank each proposal submitted in relation to the published selection criteria.

County must select the Respondent that submits the proposal that offers the Best Value for the County based on the selection criteria in the request for proposals and the weighted value for those criteria in the request for proposals, and its ranking evaluation.

The County must first attempt to negotiate a contract with the selected Respondent. The County and its Qualified Architect or Qualified Engineer may discuss options for a scope or time adjustment and any price change associated with the adjustment with the selected Respondent.

If the County is unable to negotiate a satisfactory contract with the selected Respondent, the County must, formally and in writing, end negotiations with that Respondent and proceed to the next Respondent in the order of the selection ranking until a contract is reached or all proposals are rejected.

PART 4. Job Order Contracts Method

"Job order contracting" is a solicitation method used for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is recurring but delivery times, type, and quantities of work required are indefinite.

In addition to these procedures in Part 4, the project must comply with all procedures in Part 1 of this section.

This Part only applies to a building, the design and construction of which is governed by accepted building codes, or a structure or land, whether improved or unimproved, that is associated with that building.

County may award Job order contracts for the maintenance, repair, alteration, renovation, remediation, or minor construction of a facility if:

- a) the work is of a recurring nature but the delivery times are indefinite; and
- b) indefinite quantities and orders are awarded substantially on the basis of task that can be described and priced in advance.

17.022 Limitations of Delivery Method

This Part does not apply to:

- a highway, road, street, bridge, utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction; or
- a building or structure that is incidental to a project that is primarily a civil engineering construction project.

County must establish the maximum aggregate contract price when it advertises the request for proposals.

The Commissioners Court must approve each job, task, or purchase order that exceeds \$500,000.

A job order contract may be used to accomplish work only for the County that awards the contract unless:

- a) the solicitation for the job order contract and the contract specifically provide for use by other governments or persons; or
- b) the County enters into an interlocal agreement that provides otherwise.

17.023 Selection of Architect or Engineer

If a Job order contract or an order issued under it services that the Texas Occupations Code defines as the practice of architecture or engineering, County must select or designate a Qualified Architect or Qualified Engineer to prepare the construction documents for the project.

County does not have to designate an architect or engineer if the job order contract or order issued under it is for industrialized housing, industrialized buildings, or relocatable educational facilities and the contractor employs the services of a Qualified Architect or a Qualified Engineer who approves the documents for the project.

17.024 Solicitation Procedures

The County may use the competitive sealed proposal method under Part 3 for Job order contracts.

County must advertise for, receive, and publicly open sealed proposals for Job order contracts.

The County may establish contractual unit prices for a job order contract by:

- a) specifying one or more published construction unit price books and the applicable divisions or line items; or
- b) providing a list of work items and requiring the Respondents to propose one or more coefficients or multipliers to be applied to the price book or pre-priced work items as the price proposal.

County may require Respondents to submit information in addition to rates, including experience, past performance, and proposed personnel and methodology.

17.025 Contract Award

The County may award Job order contracts to one or more Job order contractors in connection with each solicitation of proposals.

The base term for a Job order contract may not exceed two years with a maximum of only three annual renewals.

17.026 Orders Under the Contract

An order for a job or project under a Job order contract must be signed by the Purchasing Agent and the contractor.

The order may be:

- a) fixed price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities; or
- b) unit price order based on the quantities and line items delivered.

If required by law, based on the amount or estimated amount of any order, the contractor must provide Payment Bonds and Performance Bonds.

PART 5. Construction Manager-Agent Method

"Construction manager-agent method" means a delivery method by which County contracts with a construction manager-agent to provide consultation or administrative services during the design and construction phase and to manage multiple contracts with various construction prime contractors.

In addition to these procedures in Part 5, the project must comply with all procedures in Part 1 of this section.

A "construction manager-agent" is a legal entity that serves as the agent for the County by providing construction administration and management services during the design and construction phase and to manage multiple contracts with various construction prime contractors for the Construction of a facility.

County may retain a construction manager-agent for assistance in the Construction of a facility only as provided by this Part.

County must select a construction manager-agent on the basis of demonstrated competence and qualifications in the manner provided for professionals other than The Three listed in Section 16 Purchasing Professional Services of this Guide.

A construction manager-agent selected under this Part must maintain professional liability or errors

and omissions insurance in the amount of at least \$1 million for each occurrence.

The contract between the County and the construction manager-agent may require the construction manager-agent to provide:

- a) administrative personnel;
- equipment necessary to perform duties under this Part;
- c) on-site management; and
- d) other services specified in the contract.

A construction manager-agent may not:

- a) self-perform any aspect of the Construction of the facility;
- b) be a party to a construction subcontract for the Construction of the facility; or
- provide or be required to provide Performance Bonds and Payment Bonds for the Construction of the facility.

The County's contracted Qualified Architect or Qualified Engineer may not serve, alone or in combination with another person, as the construction manager-agent unless that professional obtains the position of construction manager-agent through a separate or concurrent Solicitation process conducted in compliance with this Part.

Despite the limitations on the construction manager-agent, the County's Qualified Architect or Qualified Engineer may provide customary construction phase services under the architect's or engineer's original Professional Service agreement in compliance with applicable licensing laws.

A construction manager-agent represents the County in a fiduciary capacity.

On or before the selection of a construction manager-agent, the County must select or designate a Qualified Architect or Qualified Engineer to prepare the construction documents for the project.

To the extent that the construction manager-agent's services are services that the Texas Occupations

Code defined as the practice of architecture or engineering³³, those services must be performed by a Qualified Architect or Qualified Engineer.

A County using the construction manager-agent method must procure a general contractor or trade contractors who will serve as the prime contractor for their specific portion of the work in compliance with applicable law and in any manner authorized by this Part.

The general contractor or trade contractors who will serve as the prime contractors must provide Performance Bonds and Payment Bonds to the County in compliance with applicable laws.

PART 6. Construction Manager-At-Risk

17.027 Description of CMAR

"CMAR" (the acronym for Construction Manager-at-Risk) is a delivery method by which the County contracts with a Qualified Architect or Qualified Engineer for both design and construction phase services and contracts separately with a CMAR to serve as the general contractor and to provide consultation during the design and Construction of a facility.

In addition to these procedures in Part 6, the project must comply with all procedures in Part 1 of this section.

A County may use the CMAR method in selecting a general contractor for the Construction of a facility only as provided by this Part.

A CMAR is a legal entity that assumes the risk for Construction of a facility at the contracted price as a general contractor and provides consultation to the County about construction during and after the design of the facility. The contracted price may be a guaranteed maximum price.

A County may use the CMAR method in selecting a general contractor for the Construction of a facility only as provided by this Part.

³³ Texas Occupations Code Chapter 1001 or 1051

17.028 Selection of Architect or Engineer

On or before the selection of a construction manager-at-risk, the County must select or designate a Qualified Architect or Qualified Engineer to prepare the construction documents for the project.

17.029 Eligibility to be CMAR

The County's architect or engineer for a project, or a legal entity related to the County's architect or engineer, may not serve, alone or in combination with another person, as the CMAR. An entity is related to the County's architect or engineer if it is a legal entity that:

- a) is a subsidiary, parent corporation, or partner, or
- b) has any other relationship in which the County's architect or engineer has an ownership interest, or
- c) is subject to common ownership or control, or
- d) is party to an agreement by which it will receive any proceeds of the construction manager-atrisk's payments from the County.

Despite this limitation on the construction managerat-risk, County's Qualified Architect or Qualified Engineer may provide customary construction phase services under the architect's or engineer's original Professional Service agreement in compliance with applicable licensing laws.

17.030 Procedures for Selecting CMAR

County may select the CMAR in either a one-step process or two-step process.

17.031 One Step Process

County must prepare a single request for proposals that includes:

a) a statement as to whether the selection process is a 1-step or 2-step process;

- b) general information on the project site, project scope, schedule, selection criteria and the weighted value for each criterion, and estimated budget and the time and place for receipt of the proposals;
- c) notice that the safety record of a Respondent may be considered³⁴ in determining the responsibility of the Respondent; and
- d) other information that may assist the County in its selection of a CMAR.

The County must state the selection criteria in the request for proposals.

The County may request, as part of the Respondent's proposal, proposed fees and prices for fulfilling the general conditions which include onsite management, administrative personnel, insurance, bonds, equipment, utilities, and incidental work, including minor field labor and materials in a contract for the Construction of a facility and the Respondent's safety record.

Within 45 calendar days after the date on which the final proposals are opened, the County must evaluate and rank each proposal submitted in relation to the criteria in the Solicitation document.

17.032 Two Step Process

County must prepare an initial request for qualifications that includes:

- a) a statement as to whether the selection process is a 1-step or 2-step process;
- general information on the project site, project scope, schedule, selection criteria and the weighted value for each criterion, and estimated budget and the time and place for receipt of the qualifications;
- c) notice that the safety record of a Respondent may be considered in determining the responsibility of the Respondent; and
- d) other information that may assist the County in its selection of a CMAR.

³⁴ Local Government Code 271.025

The County must state the selection criteria in the request for qualifications and the Respondent's safety record.

Within 45 calendar days after the date on which the proposals are opened, the County must evaluate and rank each proposal submitted in relation to the published selection criteria.

In step one, County may not request fees or prices. The County must receive, publicly open, and read aloud the names of the Respondents.

In step two, the County may request that five or fewer Respondents, selected solely on the basis of qualifications, provide additional information, including the CMAR's proposed fee and prices for fulfilling the general conditions which include onsite management, administrative personnel, insurance, bonds, equipment, utilities, and incidental work, including minor field labor and materials in a contract for the Construction of a facility and the Respondent's safety record.

The County must receive, publicly open, and read aloud the names of the Respondents and the fees and prices, if any, stated in each proposal as the proposal is opened.

County must select the Respondent that submits the proposal that offers the Best Value for the County based on the published selection criteria and on its ranking evaluation.

The County must first attempt to negotiate a contract with the selected Respondent.

If the County is unable to negotiate a satisfactory contract with the selected Respondent, the County must, formally and in writing, end negotiations with that Respondent and proceed to negotiate with the next Respondent in the order of the selection ranking until a contract is reached or negotiations with all ranked Respondents end.

Within seven calendar days after the date the contract is awarded, the County must make the rankings determined in the first step public.

17.033 Payment and Performance Bonds

The CMAR must deliver the Payment Bonds and Performance Bonds within 10 calendar days after the date the CMAR executes the contract unless the CMAR furnishes a Bid Bond or other financial security acceptable to the County to ensure that the CMAR will furnish the required Performance Bonds and Payment Bonds when a guaranteed maximum price is established.

The maximum amount that the surety company will pay under the Performance Bonds and Payment Bonds delivered to the County must each be in an amount equal to the Construction budget, as specified in the request for proposals or qualifications if the CMAR and the County do not determine a fixed contract amount or a guaranteed maximum price when the Commissioners Court awards the contract.

17.034 Performance of Work

A CMAR must publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions which include on-site management, administrative personnel, insurance, bonds, equipment, utilities, and incidental work, including minor field labor and materials in a contract for the Construction of a facility and the Respondent's safety record.

A CMAR may seek to perform portions of the work itself if:

- a) the CMAR submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors; and
- b) the County determines that the CMAR 's bid or proposal provides the Best Value for the County.

The CMAR must review all trade contractor or subcontractor bids or proposals so that it does not disclose the contents of the bid or proposal during the selection process to a person who is not employed by the CMAR, Qualified Architect, Qualified Engineer, or County.

The CMAR must make all bids or proposals available to the County on request and to the public after the later of the award of the contract or the seventh calendar day after the date of final selection of Bids or proposals.

The County must compensate the CMAR by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the CMAR incurs because the County required the CMAR to accept another bid or proposal if:

- a) the CMAR reviews, evaluates, and recommends
 a Bid or proposal from a trade contractor or subcontractor to the County, but
- b) the County requires the CMAR to accept another Bid or proposal.

The CMAR may itself fulfill the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements without advertising if, after being selected in compliance with this Part, that selected trade contractor or subcontractor:

- a) defaults in the performance of its work, or
- b) fails to execute a subcontract.

PART 7. Design-Build Method to Construct Buildings

"Design-Build" is a project delivery method by which a County contracts with a single entity to provide both design and construction services for the Construction of a facility.

In addition to these procedures in Part 7, the project must comply with all procedures in Part 1 of this section.

When using the Design-Build method, the County must enter into a single contract with a Design-Build firm for the design and Construction of the building or associated structure.

17.035 Applicability

The Design-Build method in this Part only applies to a facility that is a building or an associated structure, including an electric utility structure.

The Design-Build method in this Part does not apply to:

- a highway, road, street, bridge, underground utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction; or
- b) a building or structure that is incidental to a project that is primarily a civil engineering construction project.

County may use the Design-Build method for the Construction of a building or associated structure only as provided by this Part.

17.036 Eligibility

A Design-Build firm under this Part must be a legal entity or team that includes a Qualified Architect or Qualified Engineer and a construction contractor.

17.037 Selection of Architect or Engineer

County must select or designate a Qualified Architect or Qualified Engineer independent of the Design-Build firm to act as the County's representative for the duration of the project.

17.038 Procedures for Selecting Design-Build Firm

County must prepare a request for qualifications that includes:

- a) general information on the project site, project scope, budget, special systems, selection criteria and the weighted value for each criterion,
- b) notice that the safety record of a Respondent may be considered in determining the responsibility of the Respondent, and

 c) other information that may assist potential Design-Build firms in submitting proposals for the project.

The design criteria package must include more detailed information on the project. If the Texas Occupations Code defines the services required to prepare the design criteria package as part of the practice of architecture or engineering³⁵, those services must be performed by a Qualified Architect or Qualified Engineer, as applicable.

Each firm must certify to the County that each architect or engineer who is a member of the firm was selected based on demonstrated competence and qualifications, as provided The Three in Section 16 Purchasing Professional Services of this Guide.

County must also prepare the design criteria package which must include:

- a) a set of documents that provides sufficient information, including criteria for selection, to permit a Design-Build firm to prepare a response to the County's request for qualifications and to provide any additional information requested, and
- b) specified criteria the County considers necessary to describe the project;

and may include, as appropriate:

- a) the legal description of the site,
- b) survey information concerning the site,
- c) interior space requirements,
- d) special material requirements,
- e) material quality standards,
- f) conceptual criteria for the project,
- g) special equipment requirements,
- h) cost or budget estimates,
- i) time schedules,
- j) quality assurance and quality control requirements,
- k) site development requirements,
- applicable codes and ordinances,
- m) provisions for utilities,

- n) parking requirements, and
- o) any other requirement,

but may not require Respondents to submit architectural or engineering designs as part of a proposal or a response to a request for qualifications.

17.039 Evaluation Criteria

The County may not evaluate cost-related or pricerelated factors but must evaluate each design-build firm that responds to the request for qualifications based on the following:

- a) the firm's experience, technical competence, and capability to perform;
- b) the past performance of the firm and members of the firm;
- c) notice that the safety record of a Respondent may be considered in determining the responsibility of the Respondent; and
- d) other appropriate factors submitted by the firm in response to the request for qualifications.

The County may request additional information about the following:

- a) demonstrated competence and qualifications,
- b) considerations of the safety and long-term durability of the project,
- the feasibility of implementing the project as proposed,
- d) the ability of the Respondent to meet schedules, or costing methodology in relation to:
 - (1) a Respondent's policies on subcontractor markup,
 - (2) definition of general conditions,
 - (3) range of cost for general conditions,
 - (4) policies on retainage,
 - (5) policies on contingencies,
 - (6) discount for prompt payment, and
 - (7) expected staffing for administrative duties.

³⁵ Texas Occupations Code Chapter 1001 or 1051

e) a guaranteed maximum price or bid for overall design or construction .

The County must rank each proposal submitted on the basis of the criteria stated in the request for qualifications.

The County must evaluate the additional information submitted by the Respondents on the basis of the selection criteria stated in the request for qualifications and the results of any interview.

The County must not qualify more than five Respondents to submit proposals that contain additional information and, if the County chooses, to interview for final selection.

17.040 Selection of Design-Build Firm

County must select the Design-Build firm that submits the proposal offering the Best Value for the County on the basis of the published selection criteria and on its ranking evaluations.

The County must first attempt to negotiate a contract with selected firm.

If the County is unable to negotiate a satisfactory contract with the selected firm, the County must end all negotiations with that firm formally and in writing and proceed to negotiate with the next firm in the order of the selection ranking until a contract is reached or negotiations with all ranked firms end.

Within seven calendar days after the date the contract is awarded, the County must make the rankings determined after receipt of additional information or an interview public.

A Payment Bond or Performance Bond is not required and may not provide coverage for the design portion of the Design-Build contract with the Design-Build firm under this Part.

The Design-Build firm must deliver the bonds within 10 calendar days after the date it executes the contract for the build portion of the contract unless it furnishes a Bid Bond or other financial security acceptable to the County to ensure that it will furnish the required Performance Bond and Payment Bond before Construction begins.

The maximum amount that the surety company will pay under the Performance Bond and the Payment Bond that the Design-Build firm must deliver to the

County must each be in an amount equal to the Construction budget, as stated in the design criteria package delivered to the County if the County and the Design-Build firm have not determined a fixed contract amount or a guaranteed maximum price when the Design-Build contract is awarded.

17.041 Submission of Design

After the County selects the Design-Build firm, that firm's Qualified Architects or Qualified Engineers must submit all design elements for review and determination of scope compliance to the County or the County's Qualified Architect or Qualified Engineer before or concurrently with Construction.

The Design-Build firm must supply County with a set of construction documents for the completed project at the conclusion of Construction. The documents must note any changes made during Construction.

PART 8. Design-Build Procedures for Certain Civil Works Projects

"Design-Build" is a project delivery method by which a County contracts with a single entity to provide both design and construction services for the Construction of a facility.

In addition to these procedures in Part 8, the project must comply with all procedures in Part 1 of this section.

County may use the Design-Build method for the Construction of a civil works project.

County must use at least the following criteria as a basis for determining the circumstances under which the Design-Build method is appropriate for a project:

 a) the extent to which the County can adequately define the project requirements;

- b) the time constraints for the delivery of the project;
- c) the ability to ensure that a competitive procurement can be held; and
- d) the County's ability to manage and oversee the project, including the availability of experienced personnel or outside consultants who are familiar with the Design-Build method of project delivery.

When using this method and in entering into a contract for the services of a Design-Build firm, the County and the Design-Build firm must follow the procedures in this Part.

17.042 Applicability

County may use the Design-Build method for the Construction of a civil works project.

"Civil works project" is a project for

- a) roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water distribution and wastewater conveyance facilities, desalination projects, wharves, docks, airport runways and taxiways, storm drainage and flood control projects, or transit projects;
- types of projects or facilities related to those described above and associated with civil engineering construction; and
- buildings or structures that are incidental to projects or facilities that are described above and that are primarily civil engineering construction projects.

A contract for a project under this Part may cover only a single integrated project. A County may not enter into a contract for aggregated projects at multiple locations.

Under this Part, County may not enter into contracts for more than six projects in any fiscal year.

17.043 Eligibility

"Design-build firm" must be a legal entity or team that includes a Qualified Engineer and a construction

contractor qualified to engage in civil works Construction in Texas.

17.044 Selection of Architect or Engineer

County must select or designate a Qualified Engineer independent of the Design-Build firm to act as its representative for the solicitation process and for the duration of the work on the civil works project.

If the engineer providing engineering services on the project is not a full-time Employee of the County, the County must select the engineer on the basis of demonstrated competence and qualifications as provided for The Three in section 16 Purchasing Professional Services of this Guide.

17.045 Procedures for Selecting Design-Build Firm

The County must prepare a request for qualifications that includes:

- a) information on the civil works project site;
- b) project scope;
- c) project budget;
- d) project schedule;
- e) the following criteria for selection and the weighting of the criteria:
 - 1) each Respondent's experience,
 - 2) technical competence, and
 - 3) capability to perform,
 - 4) the past performance of the Respondent's team and members of the team, and
 - other appropriate factors submitted by the team or firm in response to the request for qualifications,
- notice that the safety record of a Respondent may be considered in determining the responsibility of the Respondent; and
- g) other information that may assist potential Design-Build firms in submitting proposals for the project.

The County must also prepare a design criteria package which is a set of documents that provides sufficient information to convey the intent, goals, criteria, and objectives of the civil works project; and permits a Design-Build firm to assess the scope of work and the risk involved; and submit a proposal on the project. This design criteria package may include, as appropriate:

- a) budget or cost estimates;
- b) information on the site;
- c) performance criteria;
- d) special material requirements;
- e) initial design calculations;
- f) known utilities;
- g) capacity requirements;
- h) quality assurance and quality control requirements;
- i) the type, size, and location of structures;
- j) notice that the safety record of a Respondent may be considered in determining the responsibility of the Respondent, and
- k) notice of any goals adopted by the County relating to awarding contracts to HUBs.

Each Respondent must select or designate each engineer who is a member of its team based on demonstrated competence and qualifications, as provided for The Three in section 16 Purchasing Professional Services of this Guide and certify to the County that each selection or designation was based on those criteria.

The technical proposal must address:

- a) project approach;
- b) anticipated problems;
- c) proposed solutions to anticipated problems;
- d) ability to meet schedules;
- e) conceptual engineering design; and
- f) other information requested by the County.

The technical proposal is a component of the proposal under the request for proposals.

County must request proposals from Design-Build firms identified by the request for qualifications. The request for proposals must include:

 a) a design criteria package which is a set of documents that provides sufficient information

- to convey the intent, goals, criteria, and objectives of the civil works project; and permits a Design-Build firm to assess the scope of work and the risk involved;
- b) if the project site is identified, a geotechnical baseline report or other information that provides the Design-Build firm minimum geotechnical design parameters to submit a proposal;
- c) detailed instructions for preparing the technical proposal and the items to be included, including a description of the form and level of completeness of drawings expected; and
- d) the relative weighting of the technical and price proposals and the formula by which the proposals will be evaluated and ranked.

17.046 Identification of Team Members

County may require a Design-Build firm responding to a request for additional information and detailed proposals to identify companies that will:

- a) fill key project roles, including project management, lead design firm, quality control management, and quality assurance management; and
- b) serve as key task leaders for geotechnical, hydraulics and hydrology, structural, environmental, utility, and right-of-way issues.

If County selects a Design-Build firm for a Design-Build agreement and requires it to identify companies under this subsection, the firm may not make changes to the identified companies unless an identified company:

- a) is no longer in business, is unable to fulfill its legal, financial, or business obligations, or can no longer meet the terms of the teaming agreement with the Design-Build firm;
- b) voluntarily removes itself from the team;
- fails to provide a sufficient number of qualified personnel to fulfill the duties identified during the proposal stage; or
- d) fails to negotiate in good faith in a timely manner in compliance with provisions

established in the teaming agreement proposed for the project.

If the Design-Build firm makes team changes contrary to the preceding subsection, any cost savings resulting from the change accrue to the County and not to the Design-Build firm.

17.047 Submission of Proposal

The Design-Build firm must submit a response to a request for detailed proposals on or before the earlier of the time for submission requested by the County or the 180th day after the date the County makes a public request for the proposals from the firms selected based on demonstrated competence and qualifications.

Each proposal must include a sealed technical proposal and a separate sealed cost proposal.

17.048 Evaluation Criteria

The County must receive proposals and must evaluate:

- a) each Respondent's experience, technical competence, and capability to perform,
- b) the past performance of the Respondent's team and members of the team,
- c) the safety record of a respondent³⁶ to determine the Respondent's responsibility, and
- d) other appropriate factors submitted by the team or firm in response to the request for qualifications.

County must not use cost-related or price-related evaluation factors at this stage.

County must qualify Respondents to submit additional information and, if the County chooses, to interview for final selection.

17.049 Selection of Design-Build Firm

The County must select a Design-Build firm using the following method to combine technical and cost proposals.

The County must first open, evaluate, and score each responsive technical proposal submitted on the basis of the criteria described in the request for proposals and assign points on the basis of the weighting specified in the request for proposals.

The County may reject as nonresponsive any firm that makes a significant change to the composition of its firm as initially submitted.

The County must subsequently open, evaluate, and score the cost proposals from firms that submitted a responsive technical proposal and assign points on the basis of the weighting specified in the request for proposals.

The County must select the Design-Build firm in compliance with the formula provided in the request for proposals.

17.050 Negotiation

After selecting the highest-ranked Design-Build firm based on the procedure in the preceding subsection, the County must first attempt to negotiate a contract with the selected firm.

If the County is unable to negotiate a satisfactory contract with the selected firm, the County must end all negotiations with that firm formally and in writing, and proceed to negotiate with the next firm in the order of the selection ranking until a contract is reached or negotiations with all ranked firms end.

³⁶ Local Government Code 271.0275

17.051 Contract Provisions

The County must assume:

- a) all risks and costs associated with:
 - scope changes and modifications that the County requests;
 - (2) unknown or differing site conditions unless the County provided otherwise in the request for proposals and final contract;
 - (3) regulatory permitting, if the County is responsible for those risks and costs by law or contract;
 - (4) natural disasters and other force majeure events unless the County provided otherwise in the request for proposals and final contract; and
- b) all costs associated with property acquisition, excluding costs associated with acquiring a temporary easement or work area associated with staging or construction for the project.

A Performance Bond or a Payment Bond is not required for the portion of a Design-Build contract under this Part that includes design services only.

If the County awards a Design-Build contract, the Design-Build firm must deliver the Performance Bond and Payment Bonds within 10 calendar days after the date the design-build firm executes the contract unless the Design-Build firm furnishes a Bid Bond or other financial security acceptable to the County to ensure that the Design-Build firm will furnish the required Performance Bond and Payment Bonds before beginning construction.

The maximum amount that the surety company will pay under the Performance Bond and Payment Bond that the design-build firm delivers to the County must each be in an amount equal to the construction budget, if commercially available and practical, as specified in the design criteria package if the County and the Design-Build firm have not determined a fixed contract amount or a guaranteed maximum price when the County awards a Design-Build contract.

After the County selects a Design-Build firm under this Part, the firm's engineers must submit all design

elements for review and determination of scope compliance to the County before or concurrently with construction.

An appropriately licensed design professional must sign and seal construction documents before the documents are released for construction.

17.052 Stipend for Unsuccessful Firms

The County may not release or disclose to any person, including the successful Respondent, the work product contained in any unsuccessful proposal. Unless a stipend is paid to an unsuccessful Respondent, that Respondent firm retains all rights to the work product submitted in a proposal.

The County must return all copies of the proposal and other information submitted to an unsuccessful Respondent.

The County or its agents may not use any unique or non-ordinary design element, technique, method, or process contained in an unsuccessful proposal that was not also contained in the successful proposal at the time of the original submittal, unless the County acquires a license from the unsuccessful Respondent. A violation of this section voids the contract for the project entered into by the County.

The County is liable to any unsuccessful Respondent, or any member of the Design-Build team or its assignee, for one-half of the cost savings associated with the unauthorized use of the work product of the unsuccessful Respondent. Any interested party may bring an action for an injunction, declaratory relief, or damages for a violation of this section. A party who prevails in an action under this subsection is entitled to reasonable attorney's fees as approved by the court.

The County may offer an unsuccessful Design-Build firm that submits a response to the County's request for additional information a stipend for preliminary engineering costs associated with the development of the proposal. The stipend must be one-half of one percent of the contract amount and must be specified in the initial request for proposals. If the offer is accepted and paid, the County may make use of any work product contained in the proposal,

including the techniques, methods, processes, and information contained in the proposal.

The use by the County of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the County and does not confer liability on the Respondent who receives the stipend.

Work product contained in an unsuccessful proposal submitted and rejected under this Part is confidential and may not be released, even in response to a request under the Public Information Act, unless a stipend offer has been accepted and paid.

The County must provide or contract for, independently of the design-build firm, the

following services as necessary for the acceptance of the civil works project by County:

- a) inspection services;
- b) construction materials engineering and testing; and
- c) verification testing services.

The County must select the services for which it contracts under this section as provided for Professional Services other than The Three in compliance with the Professional Services Procurement Act.

At the conclusion of Construction, the Design-Build firm must supply to the County a record set of construction documents for the project prepared as provided by the Texas Occupations Code.³⁷

³⁷ Texas Occupations Code Chapter 1001

SECTION 18. DEBRIEFING, PROTEST & APPEAL PROCEDURES

18.001 Debriefings

Debriefing meetings may be beneficial to both the Respondent and the County staff. During the debriefing meeting, the Respondent may obtain information about why its response was unsuccessful so that it may apply "lessons learned" in future purchasing initiatives with the County. A debriefing meeting provides an opportunity for County staff to obtain valuable insight about the purchasing process from the Respondent's perspective.

After contract award, Purchasing staff schedule and provide debriefings when requested by an unsuccessful Respondent. At the meeting, Purchasing staff, and other County staff and Officials as appropriate, must be prepared to discuss the strengths and weaknesses of the unsuccessful Respondent's response relative to the advertised evaluation criteria as well as how the County's decision complied with applicable purchasing law and the published solicitation.

Representatives from the unsuccessful Respondent may attend the meeting, which may be a phone conference when it is appropriate in the Purchasing Agent's discretion. The Purchasing staff may request that the Respondent provide a list of questions to be addressed during the debriefing with the Respondent's attendees at least two business days in advance. If the Respondent's legal counsel plans to attend the meeting, the Purchasing staff promptly notify the County Attorney's Office. If the Purchasing Agent requests it, a member of the County Attorney's Office attends the debriefing.

The Purchasing staff limit the discussion at the debriefing meeting to only the matters raised in the Respondent's response – Purchasing staff must not engage in discussions about how the unsuccessful Respondent's response compared to other responses and must take care not to divulge confidential information about a competitor's response.

Debriefings do not include any discussion or comment about the contract Negotiations with the successful Respondent.

18.002 Requests for Clarification

After the question and answer closes seven days before the Respondent must submit the response, the potential Respondent may submit a request for clarification if further clarification is desired.

When any request for clarification is received, the Purchasing staff must follow the rules to assess the merits of the vendor's request and correct any portions of the solicitation they consider to be ambiguous or unclear.

Procedures to Request Clarification

The procedures to request a clarification of the solicitation follow. There is no opportunity for an appeal of this process because the County views it as the mutual advantage of the County and all Respondents to improve the solicitation documents.

- a) Any Respondent may make a written request for clarification about the contents of the Solicitation document to Travis County Purchasing Office, Attn: Purchasing Agent, at the address shown on the Solicitation document, or by email to the buyer named as the point of contact in the solicitation, which must be actually received before 5:00 p.m. at least FIVE business days before the scheduled opening of responses.
 - (1) If the Purchasing Office receives a request for clarification after 5:00 p.m., it considers the request as received on the next business day.
 - (2) If the Purchasing Office receives a request for clarification after the request period ends, Purchasing staff send a written response signed by the Purchasing Agent to the requesting Respondent stating that the request for clarification is denied because it

was not received within the time limits. Purchasing staff send this response as soon as reasonably practical.

- b) The written request for clarification must include:
 - A complete statement of the reasons and facts for the request for each clarification desired,
 - (2) References to the applicable specific portions of all documents that form the basis for the request for clarification, and
 - (3) The name, address, e-mail address, and telephone number of the person representing the requesting Respondent.
- c) A) Upon receipt of the written request for clarification, the Purchasing Agent may extend the scheduled opening of responses as necessary to allow the Purchasing staff to review and evaluate it and issue a written decision.

At her discretion, the Purchasing Agent may investigate the request, obtain additional information, and provide an opportunity to resolve the request for clarification by mutual agreement or schedule one or more meetings with the representative of the requesting Respondent.

The Purchasing Agent must respond within ten (10) business days after it is received.

d) The Purchasing staff send the written decision to the requesting Respondent by e-mail or by US postal service mail to the address stated in the request.

The decision informs the requesting Respondent whether the request for clarification is upheld or denied and, if upheld, what clarifications will be made.

The Purchasing staff provide a copy of the decision to the requesting Respondent.

The Purchasing staff post all clarifications resulting from the request on BidSync on a timely basis.

18.003 HUB Non-Compliance

All procedures related to HUB compliance, sanctions and reconsiderations are detailed in section 3, subsections 3.006 through 3.011.

18.004 Protest of Award

When any protest of award is received, the Purchasing staff must follow the procedures in the solicitation document and this section and the provisions of the applicable Texas Purchasing Laws to assess the merits of the vendor's protest and correct any unlawful purchasing actions.

County staff should never assume that any protest is frivolous. Most vendors would be reluctant to file a protest against a User Department or Purchasing staff with which it wants to conduct business unless they believe that egregious errors occurred during the solicitation process.

Even if the protest is not sustainable under these protest procedures, the User Department and Purchasing staff should proactively make appropriate improvements to their purchasing practices if any shortcomings are uncovered during the protest.

Procedures to Protest

The County does not accept protests until after the Award has been made by Commissioners Court.

- a) Any Respondent may make a written protest about the award of the contract to another Respondent to Travis County Purchasing Office, Attn: Purchasing Agent, at the address shown on the solicitation document. The written protest must be actually received, before 5:00 p.m. of the TENTH business day after the contract award.
 - (1) If the Purchasing Office receives a protest after 5:00 p.m., it considers the protest as received on the next business day.
 - (2) If the Purchasing Office receives a protest after the protest period ends, the Purchasing staff send a written response signed by the Purchasing Agent to the

protesting Respondent stating that the protest is denied because it was not received within the time limits. The Purchasing staff send this response as soon as reasonably practical.

- b) The written protest must include:
 - (1) A complete statement of the reasons and facts for the protest,
 - (2) References to the applicable specific portions of all documents that form the basis for the protest, and
 - (3) The name, address, e-mail address, and telephone number of the person representing the protesting Respondent.
- c) Upon receipt of the written protest, the Purchasing Agent reviews and evaluates the protest and issues a written decision.
 - (1) At her discretion, the Purchasing Agent may investigate the protest, obtain additional information, and provide an opportunity to resolve the protest by mutual agreement, or schedule one or more meetings with the representative of the protesting Respondent.
 - (2) The Purchasing Agent must issue the decision within TEN business days after the protest is received. The written decision must state its date of issuance.
- d) The Purchasing staff send the written decision to the protesting Respondent by e-mail or by US postal service mail to the address stated in the protest.
 - (1) The decision informs the protesting Respondent whether the protest is upheld or denied.
 - (2) The Purchasing staff provide a copy of the decision to the protesting Respondent.

Appeal

The protesting Respondent may make a written appeal of the Purchasing Agent's decision to the Commissioners Court if it is not satisfied with the decision.

A written appeal must be actually received at the Travis County Purchasing Office, Attn: Purchasing Agent at the address shown on the solicitation document before 5:00 p.m. of the TENTH business day following the date of issuance of the Purchasing Agent's decision—not the date the protesting Respondent receives it.

- a) If Purchasing staff receive an appeal after 5:00 p.m., it considers the appeal as received on the next business day.
- b) If Purchasing Office receives an appeal after the appeal period ends, Purchasing staff send a written response signed by the Purchasing Agent to the appealing Respondent stating that the appeal is denied because it was not received within the time limits. The Purchasing staff send this response as soon as reasonably practical.

The Purchasing Agent must submit the written appeal to the County Judge with a request that she place an Item to consider and take appropriate action on the written appeal on the Commissioners Court agenda within a reasonable time, *usually no later* than the third regular meeting (voting session) of the Commissioners Court held after the appeal is received.

The Purchasing staff notify the appealing Respondent of the date, time, and place that the Commissioners Court is to consider the appeal for final resolution.

At that time, the Commissioners Court provides the appealing Respondent an opportunity to present evidence in support of the appeal. The Purchasing Agent may also make a presentation.

The written appeal must specify the decision being appealed and all facts and circumstances relied on in support of the appeal.

The appeal to the Commissioners Court is limited to review of:

a) The purchasing process to determine if the User Department or the Purchasing Office made a material error in following the procedural requirements in the solicitation or, where appropriate, the procedures in this section of this Guide or other laws or regulations, and b) The grounds raised in the original protest and the decision by the Purchasing Agent.

A Respondent is prohibited from stating new reasons for a protest in its appeal.

In reviewing an appeal, the Commissioners Court shall not re-evaluate the responses received in the solicitation. The Commissioners Court only reviews the materials and conclusions reached by the Purchasing Agent and determines whether to uphold or overturn the Purchasing Agent's decision on the protest.

The Commissioners Court may overturn the results of a solicitation process for ethical violations by Purchasing staff, the County evaluation committee members, the subject matter experts or any other County staff managing or participating in the solicitation process, regardless of the timing or the content of the protest.

The Commissioners Court sends a written decision on the appeal by e-mail or by US postal service mail to the appealing Respondent at the address stated in the appeal.

The decision of the Commissioners Court exhausts all of the administrative remedies available to the appealing Respondent.

The procedures and time limits in this section are mandatory and are the sole and exclusive remedy of each Respondent if there is a protest or appeal. A Respondent's failure to timely complete both the protest procedures and the appeal procedures is deemed a failure to exhaust administrative remedies. Failure to exhaust administrative remedies, or failure to comply with these procedures constitutes a waiver of any right to further pursue the protest, including legal proceedings.

18.005 Assessment of Reviews in this Section by Purchasing Staff

During the review processes described in this section 18, the Purchasing staff must keep accurate and thorough documentation.

As soon as possible after the review processes are completed, Purchasing staff hold a meeting to attempt to assess the review.

The Purchasing staff consider the following questions:

- a) What did the County do right?
- b) What did the County do wrong?
- c) What did the County do that could have been misunderstood?
- d) What can the County do better the next time?

Lessons Learned

The Purchasing staff use the "lessons learned" from the answers to these questions to determine:

- a) What the root cause of the review process was;
- b) What impact the review process had on:
 - (1) the User Department,
 - (2) the Purchasing Office,
 - (3) other Respondents to the solicitation in which the review process was filed, and
 - (4) any other persons involved in that solicitation process;
- c) Whether the review process was conducted correctly; and
- d) Whether any changes to the solicitation process need to be made.

SECTION 19. NEGOTIATION AND CONTRACT PREPARATION AND AWARD

19.001 Overview

The contract must not only meet the business needs of the User Department but comply with Texas Purchasing Laws and be legally enforceable. The contract may be in the form of a PO or a more formal signed agreement. If there is a formal signed agreement, the PO documents the encumbrance of funds.

For many purchases, Contract Preparation and Award is a quick process. For example, a contract to purchase Goods or services from a TPASS contracts may be a Purchase Order immediately following entering the Shopping Cart and selecting the vendor. For others, the User Department and the vendor may want a formal written agreement after the negotiation of terms and conditions.

19.002 Negotiations

Purchasing staff may negotiate terms and conditions during the solicitation if the law allows. Negotiations are not allowed for purchases using Invitations For Bids.

Negotiations are allowed for the following:

- a) Purchases resulting from:
 - (1) competitive sealed proposals,
 - (2) RFPs,
 - (3) RFSs,
 - (4) RFQs,
- b) Purchases under:
 - (1) DIR cooperative contracts,
 - (2) TXMAS purchases,
 - (3) cooperative contracts with certain other governments,
- Purchases for services from Texas Industries for the Blind and Handicapped Program purchases, and

 d) Contracts for Purchases the Commissioners Court has ordered exempt from the Competitive Purchasing Procedures.

Negotiating County contracts must not materially change the requirements in the published solicitation because this destroys the opportunity for true competition that is required by law.

19.003 Negotiation Team

Negotiation team members may be chosen based on their leadership style, negotiation skills, effective communications skills, and subject matter expertise. The Negotiation team generally includes Employees from the User Department, the Purchasing staff and the County Attorney's office. They should have decision-making authority appropriate for the purchase.

The lead negotiator should establish an organized and controlled negotiating environment and is not usually from the User Department. For example, in purchasing a major information technology system, the team would include persons with subject matter expertise or technology and information security expertise or purchasing experience or legal expertise or more than one of these.

19.004 Preparation for Negotiations

The key to success in negotiating is for each member of the team to be prepared. Being prepared depends on each team member having the information relevant to the Negotiation and being engaged in formal planning activities with the other members of the team.

Relevant information may include:

- a) Knowing the User Department's business needs, constraints, and any overarching User Department objectives.
- b) Being familiar with the response submitted by the vendor.

c) Having information on prevailing prices, supply conditions, and production costs.

How a team negotiates must suit the particular facts and circumstances of the purchase. Formal planning activities may include:

- a) Identifying the priority applicable to each of the County needs whether they be timing of delivery, or quality of services or contract terms;
- b) Understanding what trade-offs are acceptable and what the priority is for each of the Negotiation goals;
- c) Establishing the team's range of acceptable values on the issues being negotiated; and
- d) Anticipating the vendor's needs.

19.005 Improper Negotiation Activities

Negotiating is not about turning an inadequate response into a good one. The law prohibits some activities; others are unethical.

The following activities are **not** allowed in County Negotiations:

- a) Coaching a Respondent to bring its response up to the level of other responses through successive rounds of discussion, usually by pointing out weaknesses in the response.
- b) Disclosing information in one response to other Respondents.
- Disclosing the prices of a competing Respondent (even if done without identifying the vendor by name), or
- d) Advising any Respondent where its price stands compared to other Respondents.

19.006 Effective Negotiation Techniques

Listening effectively, establishing goodwill, and influencing the Respondent to move closer to what the County needs or wants are important to creating value for the Respondent.

Focusing on any one issue may produce less advantageous results than being open to a wide range of issues like performance results, delivery timing and methods. If the issue is reducing the costs, considering the various methods of increasing value for the cost may be beneficial.

If the Negotiation team is creative, within the limits of the solicitation, both the successful Respondent and the County are much more likely to find ways to increase the value of the transaction.

The end goal in a Negotiation focused on performance results is a mutually beneficial contract where the successful Respondent's needs are met and the User Department's needs, usually the highest possible quality Goods or services on time, are also met.

Negotiation is based on the willingness of each party to identify its own needs and meet the other party's needs.

If a negotiation becomes highly stressful, time sensitive, or takes an unexpected turn, the User Department, Purchasing staff and County Attorney's staff should remember the value of creating a break, if only to get a bottle of water, and remaining professional and cordial.

19.007 Contract Formation

When the Negotiations related to the deal are complete, the deal is written in a statement about what the County must do and what the Contractor must do and what the County must not do and what the Contractor must not do. This statement becomes a list of promises that creates a legal duty to comply with them and provides a remedy for the other if one does not perform this duty.

The requirements in a County contract cannot be substantially different from the requirements in the solicitation because that violates the Purchasing Act and is likely to encourage unsuccessful Respondents to challenge the contract award. For example, an IFB for bicycles cannot result in a contract for scooters, because the other Respondents could not know what to bid on.

19.008 Reasons to Write a Contract

The reasons for writing a contract are to:

- a) create a record of the agreement made by County,
- b) prevent misunderstanding or conflict, and
- c) create a legally binding and enforceable duty.

To avoid conflicts when memories may be unreliable or the User Department staff, the Purchasing staff, and the vendor staff may have changed, the contract must be clear and complete in addressing the issues. The person writing the contract must know both the subject matter and concerns of the County and the contractor thoroughly to anticipate potential areas of disagreement and address them adequately.

If a contract does not address all necessary aspects of the deal, the User Department and the County may not obtain what it needs — unless both the County and the contractor are willing to change the contract when the County discovers that a necessary aspect is not included.

The best interest of the County does not include unnecessarily harsh provisions which may result in the contractor being less willing to be flexible in performing the service if County needs are modified.

19.009 Minimum Elements of a Contract

- a) To form a binding contract, there must be:
 - (1) An **Offer**, usually from the Respondent who is willing to enter into a contract, and.
 - (2) An Acceptance, usually by the County agreeing to take what is offered and pay what is asked.
- b) The minimum elements within a contract are:
 - (1) Persons with authority to contract. Both the contractor and the person signing for the County must have the legal authority to sign the contract.
 - (2) Price or Consideration, which is usually money for the contractor and Goods or services for the County but may be an exchange of Goods or an exchange of services. The only requirement is that both the County and the contractor make binding promises and each receives something of value to it.
 - (3) Property, which is what the Goods or services include; for example, in a contract to Lease office space, the location of the offices is essential.
 - (4) An agreement to agree on an essential element is NOT a contract, however, a contract may state an objective method for determining an essential element.

19.010 Form of the Contract

Contracts can take many different formats. Each format has benefits and disadvantages. Selecting the most appropriate format should follow an assessment of the risks associated with contract interpretation. Below is a comparison of three examples:

TABLE 19.010 CONTRACT FORMS AND FORMATS

Format Type:	"4-corner Contract"	Layered contract	Purchase Order (PO)
Characteristic	All provisions are within the four corners of a single document signed by an authorized person.	A carefully drafted top-level document address any conflicts between the many other documents incorporated into the agreement like the response to the solicitation.	May be either the contract or an associated contract document that encumbers funds for a "4-corner" contract or a layered contract. The PO generally refers to or incorporates an existing contract or a vendor's offer.
Benefits	Easier contract management, particularly when duties, obligations, and responsibilities of each party are all logically organized in one document.	Easier contract drafting, may take less time to plan and prepare.	Flexibility of use. Can be used to accept a vendor's quote for a purchase or to counter that quote if purchase is made with delegated authority. User Department may include its own terms and conditions to supplement the existing contract or address unacceptable provisions that the vendor proposed.
Disadvantages	The contract may require more time to plan and prepare, but taking time upfront may provide better results.	Risk of not including all needed documents or identifying all variances between them More difficult contract management, perhaps due to number of places to look for answers to questions	Need to carefully review the terms and conditions of the incorporated contract or offer to make sure they meet the User Department's needs.

19.011 County Terms

Although not legally essential to be a contract, there are many recommended provisions that should not be treated as "optional." These are provisions that are included in most contracts but should only be included if appropriate.

Whether a particular contract provision is appropriate depends on the characteristics of the transaction. The wording of recommended provisions is "sample" text because these vary from contract to contract due to the unique needs of the User Department.

Generally, both the County and the contractor want to use their own "standard terms and conditions" for uniformity in their own transactions. However, terms and conditions from other contracts should not be adopted without a thorough and independent review of how those terms and conditions relate to the current purchase. Each User Department Employee, Purchasing staff and the County Attorney must make sure that the contract terms suit the particular purchase.

When grant funds are used to pay for the purchase, the grant contract may require the County to include specific contract provisions.

Otherwise, except for provisions contrary to public policy or void, voidable, or severable provisions, the contract provisions that may be included are only limited by the creativity of the person negotiating and writing the contract.

19.012 Purchase Order

A Purchase Order should contain at least the following information:

- a) County name and address
- b) County contract or Purchase Order number
- c) Date of the order
- d) Duration of contract delivery period after receipt of order or beginning and ending dates of service)
- e) Contractor's name, payee/vendor identification number, and address, including zip code

- f) NIGP Class/item code for each item
- g) Purchase Category Code
- h) List of incorporated documents and their order of priority:
 - The "four-corner" contract or PO with listing of awarded Items
 - 2) The original solicitation documents, as modified by Amendments
 - The proposal submitted by the contractor as modified by any best and final offer
 - 4) The assumptions and exceptions as agreed upon by the User Department or Purchasing staff and the vendor
- Listing of awarded Items with quantity, unit of measure, and unit price with extended totals
- j) Signature of authorized county representative.

19.013 Pre-Award Compliance Checks

To ensure compliance with applicable Texas Purchasing Law, the Purchasing staff should also conduct pre-award due diligence checks.

Pre-award compliance checks include:

- a) confirmation that funds are available,
- applicable internal reviews and approvals from Facilities Management Department, Information Technology, Communications and Records Services, TNR Fleet and similar Departments have been performed,
- c) legally required contractor disclosures are completed,
- d) verification that the selected vendor is not on the federal list of debarred or suspended contractors, and
- e) Verification that the selected vendor does not owe delinquent taxes in Travis County.

19.014 Contract Signature

An Elected Official may not enter into a contract on behalf of the County for the purchase of Goods or services:

- a) requiring the expenditure of County funds under \$50,000 unless the Purchasing Agent approves and signs the contract or unless a specific statute authorizes that Elected Official to enter into contracts for that specific Good or service;
- b) requiring the expenditure of County funds over \$50,000 unless the Commissioners Court approves the contract and the County Judge or person designated by Commissioners Court signs the approved contract or unless a specific statute authorizes that Elected Official to enter into contracts for that specific Good or service.

A County Executive or User Department may not enter into a contract on behalf of the County for the purchase of Goods or services:

- a) requiring the expenditure of County funds under \$50,000 unless the Purchasing Agent approves and signs the contract.
- b) requiring the expenditure of County funds over \$50,000 unless the Commissioners Court approves the contract and the County Judge or person designated by Commissioners Court signs the approved contract

The Commissioners Court has delegated the authority to the Purchasing Agent to sign contracts for more than \$50,000 for purchases made through:

- a) any of the State Cooperative Purchasing Programs,
- a local cooperative purchasing program with which the Commissioners Court signed a contract,
- c) an interlocal cooperation agreement approved by the Commissioners Court,
- d) the federal supply schedules sources.

Purchasing staff may not enter into a contract on behalf of the County for the purchase of Goods or services requiring the expenditure of County funds less than \$50,000 unless the Purchasing Agent approves and signs the contract.

Purchasing staff may not enter into a contract for the purchase of Goods or services requiring the expenditure of County funds less than \$50,000 unless the purchase is made through:

- a) any of the State Cooperative Purchasing Programs,
- a local cooperative purchasing program with which the Commissioners Court signed an contract,
- an interlocal cooperation agreement approved by the Commissioners Court, and
- d) the federal supply schedules sources.

SECTION 20. TRAVIS COUNTY BETTER BUILDER® AND CONTRACT COMPLIANCE PROGRAM

20.001 Compliance Training

Compliance staff develop training for User Departments so that they are aware of compliance procedures and their responsibility for:

- a) Promoting, measuring, and enforcing compliance with contract terms and conditions and applicable laws by contractors;
 and
- b) Complying with internally-developed procedures for reporting issues or complaints about potential, pending, and actual noncompliance with contract terms and conditions and applicable laws by contractors.

Compliance staff train User Departments and contractors, subcontractors and the development community about the Travis County Better Builder® Program through informational outreach and Q&A sessions, workshops, social media, and pre-bid/pre-construction briefings.

As a training opportunity, before work begins on construction projects not designated as Travis County Better Builder® projects, compliance staff attend, as time and staff allow, the preconstruction meeting to:

- a) Introduce the contractor and its chain of subcontractors to Travis County Better Builder® standards and encourage voluntary compliance;
- b) Ask and respond to questions to determine the level of understanding of the standards;
- c) Discuss expectations of the contractor, subcontractors and project managers about jobsite monitoring and compliance assistance activities that compliance staff are doing on the jobsite.

20.002 Travis County Better Builder® Program

The Travis County Better Builder® Program includes the following comprehensive construction contract compliance standards:

- a) Monitoring whether contractors and subcontractors timely pay correct wages to their workers in compliance with applicable wage laws and contract provisions;
- Informing contractors and subcontractors that the County prefers that workers are paid, at a minimum, the County living wage for a single adult in effect at the time of contract award;
- Reporting deficiencies to the project manager and negotiating compliance assistance plans with the contractor;
- d) Providing safety training and daily safety reminders to enhance worker and jobsite safety on Travis County Better Builder® jobsites;
- e) Where "independent" means that the monitors are not persons, contractors or consultants hired by the contractor, independent onsite monitoring to determine whether contractor and its chain of subcontractors are complying with contractual and regulatory requirements; and
- f) Hiring workers from apprenticeship training programs to increase the skills of the workforce and achieve improved productivity, workmanship and safety.

Compliance staff select public works projects for designation as Travis County Better Builder® projects. These projects are selected based on:

- a) Project complexity,
- b) Depth of chain of subcontractors, and
- c) Number of construction workers anticipated to be performing services on the project.

If a construction contract has been designated as a Travis County Better Builder® project, compliance

staff monitor and enforce the Travis County Better Builder® standards, all applicable laws and other contract terms for compliance.

Before construction begins on a Travis County Better Builder® project, compliance staff monitors attend the pre-construction meeting with other County representatives to:

- a) Brief the contracting chain about Travis County
 Better Builder® standards;
- b) Ask and respond to questions to determine the level of understanding of these standards;
- c) Discuss expectations about the jobsite monitoring and compliance assistance activities so that the contractor, subcontractors, and project managers know what each are expecting and develop shared expectations about what Travis County Better Builder® monitors are doing on the jobsite; and
- d) Establish an agreed-upon, pre-determined schedule for jobsite visits and explain that compliance staff monitors may make unscheduled jobsite visits if they receive information about potential non-compliance with Travis County Better Builder® standards.

Better Builder® Procedures

Compliance staff apply the following Better Builder® procedures systematically and consistently before contract award using established pre-screening protocols to verify Bidders' and their proposed subcontractors' past compliance with applicable federal, state and local wage and safety laws on the County project as well as other jobsites. Pre-screening procedures include:

- a) Reviewing certifications and associated documentation completed and submitted prior to contract award by Bidders and their proposed subcontractors.
- Searching publicly accessible databases to verify information submitted to the compliance staff in the certifications and

associated documentation. These databases include:

- Department of Labor Wage and Hour Division wage records;
- (2) Occupational Health and Safety Administration records;
- (3) Secretary of State business entity filings;
- (4) Local District and County Clerk. court records;
- (5) Texas Commission on Environmental Quality records;
- (6) Texas Department of Licensing and Regulation records;
- (7) Other public information databases and reports, as needed.
- c) Making recommendations based on prescreening findings, including, if appropriate, recommending substitution or disqualification of a proposed subcontractor and disqualification of a Bidder.

Compliance staff apply the following Better Builder® procedures systematically and consistently during the construction projects:

- a) Brief the successful Bidder's (the contractor's) representatives about County monitoring activities for the project.
- b) Monitor the performance of the contractor (and its subcontractors) and their compliance with Travis County Better Builder® standards through regular on-site inspections during the project. When a complaint has been received, additional inspections are performed. During the on-site inspections, compliance monitors will use the following protocols:
 - Check-in at the jobsite trailer to inform the contractor's project manager that compliance staff monitors have arrived and are ready to begin their on-site inspection;
 - (2) Conduct construction labor interviews (8 to 10 workers per site visit), during which compliance staff:

- (A) inform workers that they are not obligated to speak with them, but may do so without fear of retaliation;
- (B) inform workers about the compliance staff's purpose for being on the jobsite; and
- (C) ask workers about jobsite safety, safety training, level of wages, promptness of payment, rest breaks, apprenticeship, other workforce training they have received or are receiving; and related Travis County Better Builder® labor standards.
- (3) Check-out at the jobsite trailer to inform the contractor's project manager that compliance staff monitors have completed the site visit.
- c) Prepare a written site visit summary to be shared with the contractor's project manager and subcontractors, if appropriate, and the County project manager that includes:
 - (1) issues identified by compliance staff that must be addressed or resolved; and
 - (2) issues reported by workers that suggest current or potential violation of laws or Travis County Better Builder® standards.
- d) After the jobsite visit has concluded, verify compliance with applicable wage and safety laws and Travis County Better Builder® standards using the following activities:
 - Inputting information collected from labor interviews by uploading both digitally and manually recorded information into the Travis County Better Builder® Program database;
 - (2) Identifying any issues gleaned from the collected information that may indicate non-compliance with Travis County Better Builder® standards;
 - (3) Following-up with contractor for additional information and documentation, including:
 - (A) certified payroll, check stub or other proof of payment records for all workers on the jobsite;

- (B) OSHA-10 cards or documentation of OSHA-10 enrollment for each worker;
- (C) OSHA-30 cards for safety managers and supervisors;
- (D) documentation showing that payroll deductions are permissible;
- (E) apprenticeship card or other confirmation of completion or enrollment in any DOL-registered program or the trade or other program approved by compliance staff.
- (4) Reviewing information collected and doing any further investigation required to determine if a claim of non-payment, underpayment, safety breaches or other non-compliance with Travis County Better Builder® standards is substantiated or mitigated by relevant facts.
- (5) Communicating with the contractor as needed to report findings and recommendations.
- e) Provide compliance assistance, where needed or requested, including:
 - Determining if additional documentation is needed to evaluate a claim or an identified non-compliance issue;
 - (2) Establishing compliance assistance plans to bring contractors and subcontractors back into compliance.
- f) Provide County project managers and the contractor with reports that include information collected during compliance staff's monitoring jobsite visits.
- g) Document all reports and observations of incidents of non-compliance regardless of the outcome of an investigation or the status of a compliance assistance plan in response to the incident.

20.003 Contract Compliance

Compliance staff maintain, review, and revise contract compliance monitoring techniques and methods and reporting procedures and practices for effectiveness and consistency.

Compliance staff monitor, record, and track instances of deficient performance of contract requirements based on direct observation or audits and based on reports from other County staff. The compliance staff use the information obtained from these activities to develop more effective compliance controls and compliance assistance practices.

Compliance staff collect information about contract compliance using the following tools to identify trends if possible:

- a) Surveys completed by Purchasing Office buyers, User Departments, and County contractors, as appropriate;
- b) In-person discussions and focus groups with User Departments, Purchasing staff, and County officials about recurring or contract compliance issues; and
- c) Monitoring and inspecting contractors' facilities and jobsites where appropriate.

Compliance staff analyze the information by applying quantifiable criteria to identify, track and manage incidents where contract requirements are not complied with. Compliance staff:

- a) Provide for the centralized collection and distribution of the results of monitoring a contractor's performance;
- b) Identify, evaluate and recommend appropriate responses when a contractor fails to perform the contractual requirements satisfactorily; and
- c) Evaluate a contractor's performance history and, together with County Departments and other Purchasing staff, determine whether a contractor is performing its contractual requirements and complying with applicable federal, state and local laws, rules, and regulations.

Compliance staff establish compliance targets for improved contractor performance by relying on the following contract management best practices: performance management; compliance monitoring; record keeping; reporting; identification of compliance issues; and identification of associated risks.

- a) Compliance staff establish procedures to identify non-compliance issues as soon as they arise.
- b) Compliance staff communicate clear expectations to County staff and the contractor and encourage communication of clear expectations between County staff and the contractor.

Compliance staff implement compliance assistance plans applicable to the specific non-compliance issues identified.

SECTION 21. RECEIPT OF GOODS

21.001 Verification of Purchase Order

When a User Department Employee receives a shipment, the Employee must:

- a) carefully compare the delivery ticket to the County's Purchase Order to determine if all items on the Purchase Order are on the delivery ticket.
- b) verify that all Goods on the delivery ticket were shipped, and
- c) Inspect the condition of the shipping cartons and all Goods shipped and received to determine whether they are in satisfactory, undamaged condition.

If so, the User Department Employee must:

- a) sign in his or her own name with a full signature in ink on all appropriate receiving documents, including the County copy,
- b) acknowledge receipt of the Goods and accept the Goods in SAP within five working days.

Receiving the Goods in SAP

The User Department Employee must not accept the Goods in SAP if some are missing or some are damaged and must be returned.

Receipt of Goods in SAP initiates payment to vendors which is due within 30 days after the later of the date that the County receives:

- a) The Good under the contract.
- b) An invoice for the Goods.

21.002 Goods Damaged On Delivery

If Goods are visibly damaged, the User Department Employee must:

- a) instruct the freight line driver to note the damage on the freight bill and sign the freight bill, and
- b) keep all shipping cartons and packing materials.

- c) If there is concealed damage, the User Department Employee should:
- a) save the shipping cartons so that the Purchasing Office can notify the freight line and request an "inspection and report of concealed damage,"
- b) complete a receiving report stating the damage,
- match the receiving report with the receiving copy of the Purchase Order, and
- d) keep all shipping cartons and packing materials.

The User Department Employee must report damaged Goods to the freight line within 15 days after delivery because the freight line is no longer liable for the damage after 15 days.

The User Department Employee must document and report all Goods that are not received properly or not in compliance with the contract to the Purchasing Office as soon as possible.

The Purchasing Office must notify the vendor of any damaged Goods within 21 days to avoid interest paying to the vendor in compliance with the Texas Prompt Payment Act.³⁸ The Purchasing Office also instructs the vender about corrective action.

The User Department should not return damaged Goods to the freight line or the vendor, unless the Purchasing Office or the vendor specifically requests the User Department to do so or unless a claim has been filed.

21.003 Documentation

The User Department must maintain all receiving documents for its records and send all vendor invoices directly to the Auditor with documents about any disputes about receipt of Goods. The User Department must send a copy of any warranty information to the Purchasing Office

³⁸ Texas Government Code Ch. 2251

which tracks the warranty information about assets in SAP.

SECTION 22. ASSETS – MANAGEMENT OF INVENTORY

22.001 Overview

The Purchasing Agent is accountable for preparing an annual inventory of County assets and filing it with the Auditor and each member of the Purchasing Board.

22.002 Protection of Property

County protects its property classified as a capitalized asset by recording it and tagging it with a unique asset tag. Property with a value of more than \$500 but below the value for a capitalized asset may be inventoried, tagged, and tracked if it is easily transported and highly desirable and the County is likely to suffer a loss or liability if it is not monitored.

User Departments must contact the Asset Manager to determine whether the property should be tagged and tracked into the SAP system. Asset tags may not be removed from County property. Knowingly removing and causing the tag to be removed, altered or obliterated and possessing, selling, or offering to sell County property knowing that the asset tag number has been removed are both criminal offenses under Texas Penal Code³⁹.

Theft of County property is also a criminal offense and the penalties become more severe as the value of the stolen property increases.

22.003 User Department Responsibilities

County Executives and Officials must take care of, maintain custody of, and accurately account for all assets assigned to their Departments.

Each County Executive or Official designates one or more Employees within the Department to coordinate with the Fixed Assets staff on the receipt and tagging of new assets, conducting inventories, and maintaining an efficient and accurate control of assets. When it receivers an asset, the User Department must notify the Purchasing Office of assets that the Purchasing Office has not acquired. The Purchasing Office determines what type of asset the property is. This property may come from various sources including:

- a) Donations. When the County receives property as a donation, regardless of the source, the County must evaluate it for inclusion in an asset inventory. Except for donated infrastructure, User Departments notify the Purchasing Office of the assets expected to be donated before preparing an agenda request for the Commissioners Court to accept the asset as required by Local Government Code.⁴⁰
- b) Jointly Funded Assets. User Departments that purchase property with other governments through interlocal contracts should contact the Purchasing Office to determine whether the property is an asset and should be tagged and tracked. Asset tags for jointly owned assets include the name(s) of all governments that coown the asset.
- c) Rented, Leased, and Lease-Purchased Assets. The User Department contacts the Purchasing Agent about all equipment rented, Leased, or purchased on a time-payment-plan so that Purchasing staff can review the agreement and determine the County's ownership rights in the equipment. The inventory records for this equipment include the expiration date of the agreement and the name of the owner, if it is not wholly owned by the County. Even though the County may not own this equipment, it is accountable for it and must protect it. The Purchasing Agent must monitor this property and insure appropriate action is taken when these agreements end.
- d) Property Received upon Completion of Consulting Contracts. When a contract with a consultant says that the consultant must

 $^{^{\}rm 39}\, {\rm Texas}\, {\rm Penal}\, {\rm Code}\, {\rm Section}\, {\rm 31.11}\, {\rm Tampering}$ with Identification Numbers

⁴⁰ Local Government Code, section 81.032

transfer equipment to the County at the end of the contract, the County must include the equipment in its inventory records as an asset. When the County provides an asset to a consultant, the inventory records should indicate when the consultant is required to return it.

- e) Assets Held in Trust. If the County has temporary control of an asset that belongs to another entity or person, the asset is held in trust. Assets in trust include property owned by the federal government and loaned to the County and property purchased with federal or state grant funds that remain the property of the granting agency.
- f) Assets Purchased with Discretionary Funds. When Officials purchase property with discretionary funds, like funds from the jail commissary, or federal and state forfeitures and sales of forfeited assets, the asset tags for the property purchased with these funds state the source of the funding. When the County disposes of these assets, the Purchasing Office returns the net auction proceeds to the funding account used for the purchase.

User Department's Annual Physical Inventory

In coordination with the Asset Manager, the User Department must review and report on the accuracy of its inventory records in SAP to the Purchasing Agent.

If the User Department finds that it has any assets in its possession that are not listed in its inventory records in SAP, the User Department should notify the Asset Manager immediately to coordinate tagging and recording.

The County Executive or Official signs and verifies the inventory list using the Physical Inventory Acknowledgement Form.

Missing Assets

The User Department contacts the Asset Manager when an asset is identified as "missing" and the User Department cannot prove that it was stolen.

"Missing" assets are not removed from the inventory records until the User Department makes a thorough and adequate search for them, and documents steps taken to locate the "missing" asset for three successive years to determine whether the asset can be located elsewhere in the County. After three successive inventory searches, the Purchasing Agent requests that the Commissioners Court remove the asset from the inventory records.

In special circumstances, the Purchasing Agent may work with the Auditor to reduce the three-year delay in removing "missing" assets from a User Department's inventory records.

Warranties

If equipment malfunctions, before any repair is initiated, the User Department should research the purchasing records in SAP to determine if a warranty has been attached to a Purchase Order or an asset record and the equipment is under warranty.

If the User Department is uncertain, the Purchasing Office may review warranty and maintenance records upon request.

In consultation with the User Department and, if appropriate, support Departments, like Facilities Management or Information Technology Systems, the Purchasing Office takes appropriate action to make claims under any warranty or the contract and enforce them, if necessary.

Rules of Cannibalization

A User Department should not remove parts from any asset unless that is in the best interest of County because a need for the parts currently exists or is reasonably expected to exist within the current fiscal year.

Before the User Department removes parts from an asset, the User Department must identify the parts and ask the Asset Manager to approve removing them. The Asset Manager then updates the inventory records to reflect parts that have been removed and lack of functionality.

Asset Reuse

Assets, like office furniture and equipment, are available in the warehouse that the Purchasing Office manages. User Departments may contact the Asset Manager to view assets that are available for transfer.

If a User Department locates needed assets at the warehouse, the User Department may request a transfer of the Surplus Property to the User Department instead of purchasing new assets. If suitable assets are available, the Asset Manager transfers them to the new User Department.

22.004 Reporting Damaged, Vandalized or Stolen Assets

Replaced Assets

If a claim can be filed under Travis County's selffunded risk program or insurance coverage purchased by the County, the User Department provides a copy of the filed claim and information about replacements to the Asset Manager so that the Asset Manager can create inventory records for the replacement assets and remove the damaged asset from inventory records.

Damaged Assets

If a claim cannot be filed under Travis County's selffunded risk program or insurance coverage purchased by the County, the User Department provides the damaged asset and information about it to the Asset Manager so that the Asset Manager can remove the asset from inventory records.

Stolen Assets

If an asset is stolen, the User Department sends a copy of the incident report made to an appropriate law enforcement agency to the Asset Manager so that the Asset Manager can remove the asset from inventory records. If the asset is recovered, the User Department notifies the Asset Manager so that he can adjust the inventory records appropriately.

22.005 Purchasing Office Responsibilities

Adding Assets to Inventory Records

There are two ways to add an asset to the inventory records:

- The Asset Manager tags assets when the User Department receives the assets in SAP or
- b) The Asset Manager can enter assets in SAP when the User Department notifies the Asset Manager of a purchase using forfeiture funds or commissary revenues or of an asset received as a donation.

Classifying Assets

Once the asset has been identified, the Asset Manager coordinates with the Auditor's Office so that the asset is correctly identified and classified. The Asset Manager contacts the User Department to arrange for tagging.

Tagging Assets

The Asset Manager's staff place a tag on most assets entered into the inventory records, except for guns and other weapons. The information on the tag includes a sequential, consecutive numbered barcode or a unique alpha-numeric designation like a manufacturer's serial number.

Annual Physical Inventory

- a) The Asset Manager coordinates the annual physical inventory of all assets.
- b) The Asset Manager compiles a consolidated inventory report for the Purchasing Agent who presents it to the Purchasing Board and the Auditor by July 1 of each year.
- c) After the inventory report is presented, the Asset Manager prepares a list of assets reported as stolen or missing for at least three (3) years and submits the list to Commissioners Court.
- d) The Commissioners Court considers the list and takes appropriate action for approval to remove stolen and missing assets from the inventory records.

Receiving Property in Warehouse

The Purchasing staff receive and accept assets delivered to the warehouse if the User Department provides the information necessary to transfer the asset to the Purchasing Office's inventory. After the warehouse receives the assets, the Asset Manager transfers them from the User Department's inventory.

The Purchasing Office must maintain all Surplus Property and Salvage Property at the warehouse until the Asset Manager transfers it to a User Department for reuse or until the Commissioners Court authorizes the Asset Manager to dispose of it.

Ground Vehicle Titles

Vendors mail the manufacturer's certificate of origin and the bill of sale to the Purchasing Office. After the Asset Manager receives the original title, the Asset Manager verifies that the vehicle is recorded in the inventory records and delivers the original title for ground vehicles to the Treasurer who stores them in the vault in her office.

All titles name "County of Travis" as the owner with the address including "c/o Purchasing Office." The Purchasing Agent signs the original titles on behalf of the County.

Aircraft Titles

The Purchasing staff prepare the information and forms required by the FAA Aircraft Registry and any other appropriate agency, and submits the required fees.

The STAR Flight Program Director submits the bill of sale and other appropriate forms for aircraft to the FAA Aircraft Registry to register and record the ownership of aircraft. The FAA Aircraft Registry is located at Federal Aviation Administration, Aircraft Registration Branch, AFS—750, P. O. Box 25504, Oklahoma City, Oklahoma 73125-0504.

All titles name "County of Travis" as the owner with the address including "c/o Purchasing Office." The Purchasing Agent signs the original bills of sale on behalf of Travis County.

SECTION 23. CONTRACT MANAGEMENT

23.001 Overview

Contract management is the last step in the Purchasing Cycle. Its objective is to make sure the contract is performed satisfactorily and the responsibilities of both the County and the contractor are performed properly. Effective contract management prevents, minimizes, and resolves problems and potential claims and disputes.

For contract management to be successful, the User Department must be involved throughout the Purchasing Cycle.

Contract management includes four general functions:

- a) Planning
- b) Monitoring Contractor Performance
- c) Payment Approval
- d) Change Management

23.002 From Contract Developer (Purchasing) to Contract Manager (User Department)

Purchasing staff enter all contracts into SAP. The County uses SAP to process and track payments to the contractor.

One of the next post-award activities is for Purchasing staff to transition the contract to the User Department staff and give the User Department a copy of the contract.

For relatively simple and routine purchases, like purchases using Texas SmartBuy, cooperative purchasing agreements or informal bidding, the User Department may document the transition activities as their own procedure.

For high-risk, high-dollar, and complex purchasing projects, County staff should hold a post-award meeting. County staff at the meeting should include at least Purchasing staff involved in the solicitation, the User Department staff, the endusers if different from the User Department, and,

if already assigned, the project manager. During this meeting, Purchasing staff must ensure that the User Department staff, and any other County stakeholders understand the key purchasing activities that have occurred before the Commissioners Court or Purchasing Agent approved the contract.

To the extent that the User Department did not participate in pre-award purchasing activities, Purchasing staff should facilitate the transition of documents and foundational knowledge about the solicitation and the contract.

Specifically, Purchasing staff must give a thorough review of the scope of work and relay the contract provisions, the agreed-upon inspections and acceptance criteria, extension and renewal potential, and remedies stated in the contract.

After the User Department team has been briefed on what preceded contract award, the User Department begins the contract administration.

23.003 Post-Award Conference with Contractor

This post-award meeting with the contractor includes the User Department staff who administer the contract. Purchasing staff assist in conducting this conference. The meeting is usually held soon after the contract is awarded and the contract is transitioned to the User Department.

Although both the contractor and User Department staff should be fully aware of the contract requirements, the post award meeting provides those involved directly in contract administration an understanding of all requirements of contract performance before the contractor begins work.

The meeting also serves as a tool to resolve any existing misunderstandings early.

23.004 User Department Responsibilities

The User Department must make sure that:

- a) the contract requirements are satisfied,
- b) Goods and services are delivered at the time promised in the contract, and
- c) the financial interests of the User Department and the County are protected.

The User Department must thoroughly understand all parts of the solicitation and the contract. The User Department should also be experienced with the size and type of purchase.

The amount of contract administration needed is not the same for all contracts. Contracts that are complex and have a high level of risk, a long term, and high dollar value require more administration.

Contractors sometimes need technical direction and approval from User Department staff to perform and meet the requirements in the Specifications. User Department staff must provide this technical direction and approval in a timely and effective manner. All instructions that the User Department gives to the contractor must be within the scope of the contract. The User Department must take care not to impose additional requirements upon the contractor or try to manage the contractor's operations so much that the contractor is legally relieved of its responsibility to perform.

Primary Contract Management Responsibilities of User Department

The primary contract management responsibilities of the User Department include the following:

- a) Being part of the purchasing team in developing the solicitation and reviewing the contract documents;
- Serving as the primary point of contact with the contractor about all matters pertaining to the contract and leading discussions intended to explain or interpret the Specifications;
- c) Providing all information necessary for the contractor to meet its needs either directly or through the Purchasing Office without providing any instructions or requests for changes directly to the contractor and relying on the project manager or the Purchasing

- Agent to give any directions directly to the contractor;
- d) Managing any County property that the contractor uses in performing the contract, like computers, telephones, or identification badges;
- e) Implementing a quality control and contract monitoring process;
- Monitoring the contractor's progress and performance to make sure that the Goods and services that the contractor delivers conform to the contract requirements;
- Making records when any exceptionally good performance occurs, keeping those records and sending a copy of these records to the Purchasing staff so that the overall master file includes them; and
- h) Making records of specific non-compliance so there is a description of specific dates, locations, examples of non-compliance and any contact or communication with the contractor about non-compliance when enforcing contractual terms and contacting the Purchasing staff if there is any question about what the User Department should or should not document.

23.005 Purchasing Responsibilities

The primary administrative responsibilities of Purchasing buyer staff include the following:

- a) Performing basic daily, weekly, and monthly administration duties to ensure successful completion of the services and receipt of the Goods and services for which it has contracted which include:
 - (1) Monitoring the continued insurance coverage and obtaining updated certificates on a timely basis.
 - (2) If the services relate to a federally-funded construction project,
 - (3) receiving and reviewing copies of contractor payrolls to ensure payments made to contractor's employees and to others performing work on the project

comply with the prevailing wage rate classifications by trade that must be included in the contract:

- Performing periodic visits to the construction site to perform spot labor interviews to ensure contractor compliance with prevailing labor laws; and
- c) Receiving and reviewing for accuracy copies of contractor invoices provided by the User Department immediately upon receipt from the contractor, reporting discrepancies to the contractor and User Department for resolution, verifying in writing that the invoice is appropriate for payment before submitting it to the Auditor for payment; and
- d) Maintaining all records that the User Department submits about events relevant to the contract during the term of the contract.

23.006 Monitoring by Third Party

The User Department may recommend that another contractor monitor the performance of a contractor and the County may contract with an expert. This is known as independent oversight. For example, in a construction project, the architectural firm that provided the construction plans may perform the task of ensuring progress in compliance with the contract. In installation of a multi-department enterprise type computer system, independent oversight may also prove beneficial.

23.007 Dispute Resolution

Dispute resolution is a core skill in successful contract management. Identifying problems early in the performance period, effectively communicating, and formalizing the process in writing are essential. The process may include a cure notice procedure or less formal written procedures.

The objective of any dispute resolution process is to resolve all problems before they escalate. Both the User Department and Purchasing staff must respond promptly to all contractor inquiries to avoid escalation of problems and make sure the User Department and Purchasing staff have not exacerbated potential problems. Initial steps are:

- a) Identify the problem. Providing the contractor with information or clarification may sometimes resolve what may appear to be a problem initially. The User Department and Purchasing staff must follow internal escalation points and they must include the County Attorney if a legal dispute arises.
- b) Research facts. The User Department and Purchasing staff must obtain all the information about the potential problem from all relevant sources, including the project manager and the contractor.
- c) Evaluate the circumstances. The User Department and Purchasing staff must review all of the facts in conjunction with the requirements and terms and conditions of the contract. The User Department and Purchasing staff must then determine the appropriate course of action.

Primary Dispute Resolution Duties of User Department

The primary dispute resolution duties of the User Department include the following:

- a) Discussing any contract performance issues, differences, disputes, and actions with Compliance staff for assistance with monitoring performance and obtaining compliance and cooperating with that staff to coordinate responses to the issues;
- b) Working with Compliance staff to develop acceptable corrective action plans as applicable;
- c) Initiating written corrective action with the contractor and resolving any differences or disputes with the contractor as they occur, if possible, and, if not, reporting them to the Purchasing Compliance staff;
- d) Issuing correspondence directly to the contractor in circumstances that the User Department considers an emergency

- situation, or if minor issues arise, and providing a copy to the Purchasing staff immediately;
- e) Consulting with County Attorney staff when County staff is aware of anything that might be a legal concern or issue so that they can address any legal concerns or issues together and timely;
- Managing, approving, and documenting any changes to the contract through Modification or change order process as authorized by the contract provisions;
- g) Inspecting and approving the Goods or services or both by accepting the deliverables in SAP and through written acceptance to the contractor or obtaining confirming that they have completed inspection and approval; and
- h) Verifying that invoices are accurate and authorizing payments consistent with the contract provisions in SAP.

Primary Dispute Resolution Duties of Purchasing Staff

The primary dispute resolution responsibilities of Purchasing Buyer staff include the following:

- a) Identifying any material breach of contract by coordinating with User Department, Compliance staff, and County Attorney, to assess the difference between contract performance and material contract nonperformance;
- Providing assistance through Compliance staff as requested by the User Department, including sharing contractor performance data and contractor responsibility history;
- c) Working with User Department to determine contractor responsibility; Working with the contractor to resolve performance issues identified by User Department;
- d) Determining whether corrective action is necessary and developing corrective action plans and timetables for completion to resolve performance issues and document actions in master file as applicable);

- e) Working with User Department and County Attorney to determine the appropriate course of action before taking any steps toward suspension or termination of the contract when necessary because of non-performance, unless emergency, life safety, or property damage issues require immediate temporary work stoppage; and
- f) Having the County Attorney review the contents of any letters, notices or other communication related to termination or suspension before sending them to the contractor as the initial steps toward potential litigation.

23.008 Contract Modifications

During the contract, changes may be necessary. Changes may be minor, administrative changes like a change of address, or they can be substantial and affect the price and delivery. In most contracts, the County calls the written document used to make changes a "Modification." In most construction contracts, this document is called a "change order." The contract may include a formal provision describing how to make changes in it.

If the contract does not have such a formal change provision, the Purchasing Office has an effective process for making changes. If the User Department and Purchasing do not manage and supervise changes, unintentional changes that do not benefit the County may occur and affect the scope of work, the delivery or performance schedule, and the cost of the contract. This may result in the contractor avoiding management controls and becoming less accountable to the County.

When changing any part of the contract, the User Department should coordinate with the Purchasing staff, the end-user, and the project manager.

23.009 Legal Analysis of Authority for Contract Modification

Certain legal principles determine whether and how the County may modify a contract. The Purchasing Act and other County laws make most County purchases subject to a competitive process. The process depends upon the type of Goods or services needed.

To comply with these laws, both the contract originally awarded and all Modifications to it must be consistent with what the County asked for in its original competitive solicitation.

For example, if the solicitation says the County wants to buy 10 desks, the county cannot also buy 300 file cabinets without issuing another competitive solicitation for file cabinets. Not only can the County not include even one file cabinet in the original contract, it also cannot later modify the contract to buy any file cabinets. The reason the County cannot do either of these is that vendors, other that the desk contractor, did not have the opportunity to compete to sell file cabinets.

These other vendors include both other vendors who offered to sell desks and other vendors who might have bid on the file cabinets separately if there were a competition. Such a large number of file cabinets might have also attracted a larger group of vendors for the original solicitation for desks.

If a change is needed to a contract, the change must be within the parameters, or scope, of the original solicitation. A significant difference in the scope of work is a material or substantial change and is not allowed because it was not subject to fair competition. A change like that goes against the meaning of competition and a fair playing field for all vendors.

When determining what constitutes scope changes to advertised specifications, the crucial question is whether the changes are material or substantial. Material or substantial changes are not measured by the number of changes made to the original Specifications. Rather, they are

measured by determining if the extent of the changes so substantially alters the original Specifications that not re-advertising the revised Specifications would deny a potential vendor an opportunity to respond and be awarded the contract. If a revision is substantial, a new solicitation is needed to ensure compliance with the bidding statutes.

23.010 Types of Contract Modifications

A unilateral Modification based on a provision in the contract that allows the County to change the contract without the contractor's consent is usually administrative and occurs within the scope of the contract; it does not affect or alter the rights of the County or the contractor. Administrative Modifications include:

- a) changes in billing instructions or address;
- b) corrections of typographical errors not affecting the substance of the contract;
- c) changes as permitted by the specific contract language; and
- d) changes in County or contractor personnel assigned to the contract.

A **bilateral Modification** is one that County and contractor both sign when the parties agree it is necessary to change the scope of work, the duration of the contract, or another provision. The nature of a bilateral Modification is usually *Substantive* which affect the rights of both parties, like a change:

- a) in the price of the contract;
- b) in the delivery schedule;
- c) in the quantity;
- d) in the deliverables like changes in the Specifications;
- e) of key personnel; or
- f) of other terms and conditions.

A **Constructive Modification** may occur when a contractor claims that the User Department changed the contract by ordering work beyond the scope of the contract and that the contractor is

entitled to additional compensation due to changes, like:

- a) accelerating the delivery schedule;
- b) directing the contractor to perform the work differently;
- c) changing the sequencing of the work;
- d) postponing acceptance or rejection of deliverables;
- e) delaying review of invoices and approval of payment; or
- f) interfering with or hindering performance.

23.011 Distribution of Responsibilities

The primary joint responsibility of the User Department and Purchasing staff in taking charge of contract Modifications is that they must not verbally authorize any contractor to begin work on a change before they document and approve the change in writing in conformance with Purchasing procedures and contract requirements. They must avoid any informal undocumented changes.

User Department Responsibilities

The primary responsibilities of the User Department in taking charge of contract Modifications include the following:

- a) The User Department must take care not to inadvertently change contract provisions during performance.
- b) If the contract provides for amounts to be held in reserve to deal with unforeseen circumstances, the User Department must develop a plan for how the contractor may request any draws against this reserve and how the County approves them.
- c) Before approving or recommending a change, the User Department must fully analyze and evaluate whether each change has an impact on each of the following:
 - (1) the contracting objective,
 - (2) the corresponding Goods or services,
 - (3) the schedule,

- (4) the cost,
- (5) County overhead,
- (6) work in progress,
- (7) completed work,
- (8) standards or acceptance criteria.
- d) The User Department establishes a single point of contact to recommend or authorize any change to the Purchasing staff.
- e) The User Department documents the change as approved or disapproved.
- f) The User Department reviews the draft and final Modification to make sure the modification meets its needs.

Responsibilities of Purchasing

The primary responsibilities of the Purchasing staff in taking charge of contract Modifications include the following:

- a) If the User Department recommends a change, the Purchasing staff document the change and the impact of it on the scope of work, no matter how small, through a contract Modification or change order or purchase order change notice, whichever is applicable.
- b) The Purchasing staff evaluate Modification requests and work with User Department to develop Modifications.
- The Purchasing staff coordinate with the vendor and User Department to develop draft Modifications.
- d) The Purchasing staff work with the County Attorney staff to review and finalize Modifications.
- e) The Purchasing staff obtain appropriate signatures on the Modification (vendor, attorney, etc.).

23.012 Extensions and Renewals

If the contract has an option to extend or renew, the User Department must assess whether to exercise the option before the current contract term expires. The contract should specify the number, length, and process for exercising renewals and extensions.

The Purchasing Office monitors the expiration dates of all contracts.

Before a contract expires, Purchasing staff notify User Departments by email of the expiration date and whether any options to extend exist. They verify whether the contractor performance is satisfactory and the User Department wants to exercise available options to extend the contract or allow the contract to expire and resolicit a new contract. To do either, the User Department must submit a written memorandum to the Purchasing Agent.

To extend the contract, the Purchasing Office issues a Modification to extend the contract if vendor performance is satisfactory, the User Department wishes to extend the contract, funding is available, and an extension is available.

If an extension is not available, Purchasing begins the solicitation process for a new contract. This follows the process for preparing the Specifications through the appropriate Competitive Purchasing Procedures.

23.013 Name Change

There are several circumstances that may result in a name change for the contractor:

- a) The contractor may decide to use an assumed name.
- b) The contractor may file a change of name with the proper authority in its state of creation.
- c) The contractor may merge with another entity.
- d) Another company may buy the contractor out or the contractor may be sold.

Each of these circumstances requires a different form of evidence and a different form of documentation verify the name change.

The original contractor may send a letter on company letterhead stating the circumstance of the name change, the new name, and the effective date in addition to attaching the appropriate documentation. The letter should be signed by an authorized representative.

For an assumed named, the contractor may provide a copy of the assumed name certificate filed with the Secretary of State; for a merger, the Certificate of Merger.

For a buyout, the original contractor must send a letter stating the circumstances of the buyout or sale. Official government certificates should be obtained as proof of the new name and of the effective date of this change.

23.014 Assignment

If the contractor asks the County to accept another vendor in its place, the User Department must perform all due diligence to evaluate the new vendor's ability and eligibility. The new vendor must be Responsible and able to perform the contract requirements at least as well as the contractor being replaced.

The User Department should request and review the documents executed by the current contractor and the replacement contractor to determine the basis of the transaction underlying the proposed assignment.

If the replacement contractor is acceptable, the current and replacement contractors must sign an assignment with the current contractor transferring all obligations and rights to the assignee and the new contractor accepting all obligations and rights under the contract.

23.015 Termination

Most contracts end by their terms without any affirmative action by the County. Sometimes, however, a User Department and the Purchasing staff may want to end a contract early.

This may be accomplished:

- a) by mutual agreement,
- b) for convenience,
- c) for cause, or

d) for lack of funding.

When a contract is terminated, the County and contractor are usually relieved from any unperformed obligations under the contract.

23.016 Termination by Mutual Agreement

When the County and the contractor consent to ending the contract before the date stated in the contract, a termination by mutual agreement occurs. This is a form of no-fault termination.

The County and the contractor document this type of termination by exchanging formal written correspondence or by a formal Modification of the contract.

23.017 Termination for Convenience

Termination for convenience allows the County to terminate the contract, in whole or in part, at any time in its sole discretion, if the Commissioners Court determines that the termination is in the best interest of the County. This option should be provided in every contract, if possible.

If vendors seek to negotiate this provision out of the contract, the Purchasing staff should seek guidance from the User Department and the County Attorney to determine whether the omission of this clause is in the best interest of the County. Whether to waive including the clause is very fact specific. For example, in a long-term contract involving extensive capital investment by a contractor, a 30-day termination for convenience by the County may not be realistic.

If the County want to terminate for convenience, Purchasing staff must provide the contractor with a written notice specifying whether the County is terminating all or part of the contract and the date termination is effective. If only part of the contract is being selectively terminated, Purchasing staff must specify which parts of the contract are being terminated. If this type of termination is used, the County provides as much notice as possible.

The contract should specify the basis for settlement with the contractor if the County terminates the contract for convenience, and the County must follow the contract terms. The County may pay the Contractor for allowable costs incurred up to the effective date of termination. The County is not liable for payment to the contractor related to the terminated portion of the work or any work performed or costs incurred after the effective date of the termination.

If the County receives an invoice from the contractor for work performed before the notice of termination, the User Department must thoroughly review the invoice to make sure that the contractor has not included any excessive costs.

23.018 Termination for Cause

A contract may be terminated for cause when the User Department or Purchasing staff conclude that the contractor fails to perform, make progress, or in any substantial way breaches the contract and continues to do so after receiving notice of the issues.

The County is not required to terminate a contract even when the circumstances permit that action. A User Department and the Purchasing staff may determine that pursuing other alternatives and working with the contractor in getting the contract back on track is in the County's best interest. Two such alternatives include:

- a) extending the delivery or completion date thus allowing the contractor to continue performance under the contract, or
- b) working with the contractor's surety to complete the outstanding work.

Termination for default should be used as the last resort and represents a failure for both the County and the contractor. The County should do everything practical to assist the contractor in curing a default. The User Department may need to weigh the respective benefits and disadvantages of allowing a delinquent contractor to continue performance and of re-soliciting for a

new contractor. Factors to consider before deciding to terminate for cause include:

- The assistance that the County has given the contractor in curing the defaults,
- b) The provisions of the contract and applicable regulations,
- The specific contractual failures. and the explanation the contractor provided for the failures,
- d) The urgency of the need for the contracted Goods or services.
- e) Actions the County may have taken that aggravated the problems,
- f) The availability of the supplies or services from other sources and the time required to obtain them compared to the additional time the current contractor requests to complete the work, and
- g) Availability of funds or resources to repurchase if the costs cannot be recovered from the defaulting contractor.

Under a termination for default, the County may demand re-purchase costs from the defaulting contractor; however, the contractor may not be financially able to finance the re-purchase, or that demand may result in lengthy legal action.

23.019 Corrective Action Plan

If there is a contract breach, the County and contractor may implement a formal corrective action plan. A corrective action plan is a written document that identifies specific activities that the contractor must perform to restore compliance with the contract.

The County must tailor the plan to address the identified deficiency, clearly state the desired outcome, and establish a time frame for the contractor to demonstrate improved performance.

Compliance staff, in coordination with the Purchasing Agent, take all steps related to obtaining contract compliance.

23.020 Cure Notices

If the User Department observes and reports poor performance or non-compliance with the contract to the Purchasing Office, it communicates with the contractor and initiates corrective action by sending a cure notice to the contractor if the contract requires a cure notice and the non-compliance is a curable type of breach. Not all defaults can be cured.

A cure notice is a letter the County sends the contractor that specifies a period of time, such as 30 days, to correct or "cure" the deficiency or violation. If the contractor fails to cure the situation or provide a satisfactory explanation for not curing as requested, the County may terminate the contract for cause.

23.021 Steps toward Suspension or Termination

Before taking any steps toward contract suspension or termination, Compliance staff consult with the County Attorney's Office.

The Purchasing Agent and the County Attorney work together on all actions from this point until resolution of the issues. Based on circumstances, like dollar value of the contract and seriousness of the non-compliance, they determine which one will take the lead in further actions.

If the Purchasing Office is taking the lead, it requests that the County Attorney's Office review any letters, notices, and other communication related to termination or suspension before the Purchasing staff send them to the contractor as the initial steps toward potential litigation.

The termination must be carefully drafted to state the facts pertinent to the cause for termination.

The County Attorney's Office advises the Commissioners Court and seeks instructions before a notice of suspension or termination is sent.

23.022 Termination for "Funding Out"

A termination for "funding out" is an essential provision that the County must include in a contract if the contract term crosses a fiscal year.

The Texas Constitution prohibits a County from incurring obligations in excess of its current revenue and budget. Therefore, any installment purchase, Lease or any other type of purchasing which incurs an obligation beyond the current fiscal year is strictly prohibited, unless they include a provision to allow the County to end its obligation.

23.023 Force Majeure

The County and contractor may suspend performance when the contractor fails to perform due to excusable causes that are beyond the contractor's control, and without the contractor's fault or negligence.

Excusable causes include Acts of God or of the public enemy, fires, floods, epidemics, strikes, freight embargos, or unusually severe weather.

Merely severe weather is not generally excusable, only "unusually severe weather" is. For example, a snowstorm in Amarillo in February is not unusual,

but in Austin, it is. And a snowstorm anywhere in Texas in July or August is indeed unusual.

If the contractor's performance failure is due to a subcontractor, to qualify as an excusable cause, the delay must be:

- a) Beyond the control and without the fault or negligence of either the contractor or a subcontractor, and
- b) Beyond the contractor's ability to obtain the Goods or services to be provided by a subcontractor from other sources in time to meet the contract delivery schedule.

23.024 Close-Out Procedures

The User Department ensures that all applicable warranty certificates are received and safeguarded throughout the term of the warranty, and then provides it to the Purchasing Office.

Every subcontractor and materialman must provide a release that states that the subcontractor or materialman releases Travis County from all claims arising from labor or materials provided for the project. When these are all received, the Purchasing Agent supervises return of bonds in cooperation with the User Department to ensure that the contract is complete in all respects before these are returned.

SECTION 24. ASSETS – DISPOSAL

24.001 Overview

The Purchasing Agent is also accountable for assisting the Commissioners Court in identifying and disposing of assets after the Commissioners Court declares them to be Surplus Property or Salvage Property under Texas Local Government Code. 41

24.002 Definitions

In this section,

"Salvage property" means Personal Property, other than Items routinely discarded as waste that is so worn, damaged, or obsolete that it has no value for the purpose for which it was originally intended because of use, time, accident, or any other cause.

"Surplus property" means Personal Property that:

- a) Is not salvage property or Items routinely discarded as waste;
- b) Is not currently needed by the County;
- Is not required for the County's foreseeable needs; and
- d) Has some usefulness for the purpose for which it was intended.

"Waste" means material that cannot be reused or recycled.

"Trade-In Property" means surplus or salvage property that is exchanged for new property of the same general type if that is in the best interest of County.

24.003 List of Surplus & Salvage Property

The Purchasing Agent assists the Commissioners Court in identifying and obtaining contracts to dispose of assets that the Court has declared to be Surplus Property or Salvage Property in compliance with Local Government Code. 42 When the Purchasing Agent disposes of any property the title to which is registered, the Purchasing Agent prepares and signs all necessary forms to record the transfer of title to the buyer.

24.004 Trade-In Property

If equipment for earth-moving, material-handling, road maintenance or construction becomes Surplus Property, the Commissioners Court may exercise a repurchase option included in the contract under which this Surplus Property was originally purchased to dispose of it.

The User Department contacts the Asset Manager before the purchase to coordinate updating the inventory records to remove the Trade-In Property from the User Department's inventory. The update occurs when the Commissioners Court approves trading the property in.

24.005 Disposal of Waste

Waste that cannot be reused in operations will be recycled through a qualified contractor. Waste that cannot be reused or recycled is disposed of at a permitted landfill in compliance with all applicable regulations.

24.006 Coordination with Purchasing to Dispose of Assets

If a User Department no longer needs or uses any asset for any reason, the User Department should

 $^{^{41}}$ Texas Local Government Code Chapter 263, subchapter D, Disposition of Salvage or Surplus Property

⁴² Texas Local Government Code, Chapter 263, subchapter D, Disposition of Salvage or Surplus Property

immediately contact the Asset Manager to coordinate disposal of the asset. Without this coordination, the asset remains on the inventory records for that County Executive or Official.

24.007 Reporting Replaced, Damaged, or Stolen

Replaced Assets

If a claim can be filed under Travis County's selffunded risk program or insurance coverage purchased by the County, the User Department provides a copy of the filed claim and information about replacements for the damaged asset to the Asset Manager so that the Asset Manager can create inventory records for the replacement assets and remove the damaged asset from inventory records.

Damaged Assets

If a claim cannot be filed under Travis County's selffunded risk program or insurance coverage purchased by the County, the User Department must transfer the damaged asset to the Asset Manager so that the Asset Manager can remove the asset from inventory records and dispose of it appropriately.

Stolen Assets

If an asset is stolen, the User Department sends a copy of the incident report made to an appropriate law enforcement agency to the Asset Manager so that the Asset Manager can remove the asset from inventory records. If the asset is recovered, the User Department notifies the Asset Manager so that he can adjust the inventory records appropriately.

24.008 Methods of Disposing of General Property

In disposing of general property⁴³, the Commissioners Court may:

- Periodically sell the County's Surplus Property and Salvage Property by competitive bid or by auction,
- Sell Surplus Property and Salvage Property without competitive bidding or an auction if the purchaser is another county or a political subdivision within Travis County;
- Offer the Surplus Property as Trade-In Property for new property of the same general type if the Commissioners Court consider that to be in the best interests of the County;
- d) Dispose of property that is worthless and for which no bids are received at auction through a recycling program under which the property is collected, separated, or processed and returned to use in the form of raw materials in the production of new products.
- e) Dispose of the Surplus Property or Salvage Property by donating it to a civic or charitable organization located in Travis County if the Commissioners Court determine that:
 - Trying to sell the property would result in no bids received;
 - (2) The bid price would be less than the County's bidding-related expenses;
 - (3) The donation serves a public purpose; and
 - (4) The civic or charitable organization provides the County with adequate consideration for transportation or disposal expenses related to the Surplus Property or Salvage Property.
- Transfer gambling equipment that is in the possession of the County after its forfeiture to the Texas Facilities Commission for sale;⁴⁴
- g) Order any vehicle retired from County use under a program to encourage the use of lowemission vehicles to be crushed and recycled,

⁴³ Local Government Code, section 263.152

⁴⁴ Texas Government Code, section 2175.904

if practical, without a competitive bid or auction.

24.009 Procedures for Most Common Methods of Disposal

Auctions:

- The Purchasing Agent solicits contracts with professional auctioneers to conduct auctions of Surplus Property and Salvage Property.
- b) The Asset Manager supervises the auctioneer to ensure that the auction complies with all statutory requirements related to advertising and conduct of the sale. The Purchasing Office may reject offers in compliance with Texas Local Government Code.⁴⁶
- c) When the auction is complete, the Purchasing Office keeps a record of each Item of Surplus Property and Salvage Property sold and the sale price of each. The Purchasing Agent deposits the Auction proceeds in the County treasury and the Auditor records the proceeds in the appropriate fund.
- d) The Asset Manager updates the inventory records to show the property that was sold at auction and removes the disposed property from the inventory records.

Competitive Bids:

- a) The Asset Manager coordinates the appropriate Advertisement language and placement of the Advertisement.
- b) The Purchasing Agent supervises the competitive bidding.
- c) The Advertisement identifies how competitive bids may be received, opened, read and accepted as the highest and best bid.
- d) The County transfers assets to the successful Bidder when the Bidder pays the County the amount stated in the bid. The Purchasing Agent deposits the bid proceeds in the County

- treasury and the Auditor records the proceeds in the appropriate fund.
- e) The Asset Manager updates the inventory records to show that the property was sold by competitive bid and removes the disposed property from the inventory records.

24.010 Unclaimed or Abandoned Property

A User Department must deliver unclaimed or abandoned property that was seized by a peace officer, is not contraband, and was not ordered destroyed or returned to the person entitled to it to the Purchasing Agent.

- a) Before disposing of it, the Purchasing Agent must send a notice to the owner, if known, at their last known address by certified mail.
- b) If the property has a fair market value of less than \$500, the Purchasing Agent can sell it or donate it.
- c) If the property has a fair market value of \$500 or more, the Purchasing places one Advertisement and allows 90 days for the owner to claim the property. After that, the Purchasing Agent sells the property and deposits the net proceeds in the County treasury.⁴⁷

24.011 Disposing of Specialized High Technology Equipment

In disposing of high technology equipment used in a highly specialized program that had a purchase price of more than \$250,000,⁴⁸ the Commissioners Court may:

 a) After competitively soliciting it, enter into an agreement with a broker who has the expertise necessary to negotiate the sale of this type of equipment when it has been declared Surplus Property;

⁴⁵ Texas Local Government Code, section 263

⁴⁶ Texas Local Government Code, section 263.154

⁴⁷ Code of Criminal Procedure, Article 18.17

⁴⁸ Local Government Code, section 263.1545

- Pay a fee to the broker if the broker produces a ready, willing, and able buyer to purchase the equipment.
- c) Sell the equipment to the ready, willing, and able buyer who submits the highest cash offer and is produced by the broker in compliance with the broker agreement without complying with the requirements for conducting a public auction, bidding, or trade-in under other law.⁴⁹

When the Asset Manager disposes of aircraft or other equipment with registered ownership, the Purchasing Agent signs all necessary forms to record the transfer of title to the buyer.

24.012 Disposal of Medical and Radiological Equipment

Federal regulations govern the transport and disposal of medical and radiological equipment and the waste produced by them. Among the regulated substances are hazardous wastes, blood borne pathogens, select agents and toxins, controlled substances, and chemicals of interest.

The specific federal regulations include the National Institute of Health (NIH) Guidelines and Titles 6, 7, 9, 21, 29, 40, 42 of the Code of Federal Regulations.

If this equipment has been contaminated, before delivering it to the warehouse, the User Department must have it decontaminated by a professional qualified to do this service. The professional must attach a Decontamination Certification to it. If any contaminated equipment is delivered to the warehouse without a Decontamination Certification attached, to protect the health and safety of the Employees at the warehouse and the ground water, the Purchasing Agent may immediately secure the needed services and Commissioners Court must determine whether these services are to be paid from the budget of the former User Department or reserves.

Other equipment that a User Department might have used for holding biological materials or might have otherwise contaminated must also be certified before it is transported to the warehouse. This equipment includes refrigerators of all sizes, makes and models; ovens; heaters; stoves; and almost any Item that has been in a laboratory, the Medical Examiner's office, a County physician's office, one of the clinics, a surgery center, medical training classrooms, incarceration facilities, and either EMS or law enforcement vehicles.

There may be many other locations where an Item might be contaminated. If there are circumstances that suggest an Item may have been contaminated, these should be reported to the Asset Manager when there is a request to transport or dispose of the Item.

A User Department may also have used overlapping categories of equipment, such as lab equipment and radiological emitting devices to hold biological materials, and may have contaminated it.

Any Item that a User Department may have used to hold biological materials or may have otherwise contaminated is considered "distressed" for auction purposes.

To purchase these "distressed" Items and medical devices in Texas, the purchaser must have either a Medical Device Salvage Broker License or a Medical Device Salvage Establishment License.

⁴⁹ Texas Local Government Code, Sections 263.152 and 163.153

24.013 Disposal of Emergency Vehicles

Texas Local Government Code⁵⁰ prohibits the transfer or sale of a law enforcement vehicle:

- a) To the public unless the County first removes any equipment or insignia that might mislead a reasonable person into believing it is a law enforcement vehicle. This includes any police light, siren, amber warning light, spot light, grill light, antenna, emblem, outline of an emblem, or other emergency vehicle equipment.
- b) To a security services contractor that is regulated by the Department of Public Safety and licensed under the Texas Occupations Code⁵¹ unless the County first removes each emblem or insignia that identifies the vehicle as a law enforcement vehicle.

The Texas Transportation Code⁵² prohibits the sale of a motor vehicle used to transport sick or injured persons unless the County removes:

- a) Any equipment that only an authorized emergency vehicle may be equipped with, including a light, siren, or device, and
- b) Any evidence of any emblem or marking on the vehicle that identifies it as an authorized emergency vehicle. This does not apply if the person to whom ownership of an authorized emergency vehicle is transferred is a person who:
 - Holds a license as an emergency services provider under Texas Health and Safety Code⁵³ or
 - (2) Is in the business of buying and selling in Texas and specializes in authorized emergency vehicles, or

(3) Is in a similar business operating in a foreign country.

Authorized emergency vehicles include:

- a) A fire department or law enforcement vehicle,
- An ambulance or emergency medical services vehicle licensed by the Department of State Health Services,
- c) An emergency medical services vehicle,
- d) A County-owned or Leased vehicle designated by the Commissioners Court as an emergency management vehicle.

When the Asset Manager disposes of ground vehicles, the Purchasing Agent signs all necessary forms to record the transfer of title to the buyer.

24.014 Recycling

Some Salvage Property may produce greater value for the County when sold for materials or scrap rather than being disposed of as waste or sold at auction for a nominal sum.

The County may dispose of that property through a recycling program under which the property is collected, separated, or processed and returned to use in the form of raw materials in the production of new products.

The County Recycling Manager makes recommendations to the Purchasing Agent when this option is available.

⁵⁰ Texas Local Government Code, section 272.006

⁵¹ Texas Occupations Code, Chapter 1702

⁵² Texas Transportation Code, section 728.021

⁵³ Texas Health and Safety Code, Chapter 773

DEFINITIONS

- "Advertisement" means a public notice in a newspaper of general circulation in the County that contains information about a solicitation for or sale of assets in compliance with legal requirements.
- "Amendment" means a document used to change the provisions of a Solicitation.
- "Asset Manager" means the employee in the Purchasing Office who is accountable for inventory of assets, operations of the warehouse and disposal of assets.
- "Auditor" means Travis County Auditor and her designated representatives.
- "Best Value" means an evaluation of price based on the total life cycle cost of the Good or service which determines the best and lowest overall life cycle cost considering all relevant factors for what is being purchased.
- "Bid Bond" means a security provided by a bidder to indemnify the County if the Bidder is awarded a contract and withdraws its bid or fails to enter into the contract.
- "Bidder" means a vendor, or anyone acting on its behalf, that submits an offer to perform work or labor or supply Goods or services at a specified price in response to an IFB.
- "Commissioners Court" means the Travis County Commissioners Court.
- "Competitive Purchasing Procedures" means the Advertisement, opportunity to bid or propose on Specifications for Goods or services and other requirements that are substantially similar in the process for selecting a contractor that results in the contract being awarded based on those Specifications, terms and conditions for the best price offered, either bid or negotiated.⁵⁴

- "County" means Travis County.
- "County Attorney" means the Travis County Attorney or his designated representatives.
- "County Clerk" means Travis County Clerk or her designated representatives.
- "County Executive" means any persons with the position title County Executive, and also includes also those positions that report directly to the Commissioners Court at any specific time and their designated representatives.
- "Department" means the offices of all district, county, and precinct elected officials, appointed officials and County Executives and all subdivisions of these offices.
- "Emergency Purchase" means a prompt acquisition of a Good or service that it is necessary to relieve the necessity of the citizens or to preserve the property of the County in a case of public calamity.
- "Employee" means any person who is paid by Travis County through the SAP payroll system and acts on its behalf, including county, precinct, and district elected officials, and appointed officials.
- "Good Faith Effort" means efforts which by their scope, intensity and appropriateness to the HUB Program requirements can reasonably be expected to achieve HUB participation.
- "Goods" means anything that can be owned and is movable. It includes tangible things like cars, computers, equipment, supplies, material, and component or repair parts as well as intangible things like money, mortgages, stocks, bonds, copyrights and patents.

⁵⁴ Texas Local Government Code, chapter 262 or chapter 271 or Texas Government Code, chapter 2269

- "HUB," (the acronym for "Historically Underutilized Business") means either a business that:
 - a) has a currently valid certification as a Historically Underutilized Business, a Disadvantaged Business Enterprise, a Minority or Women Owned Business or similar designation from any of the following entities:
 - (1) The State of Texas,
 - (2) City of Austin,
 - (3) Texas Unified Certification Program (TUCP) or
 - (4) South Central Texas Regional Certification Agency (SCTRCA); or
 - b) Complies with the following criteria:
 - does not exceed the size standards prescribed in Texas Administrative Code;
 - (2) has its principal place of business in Texas; and
 - (3) is at least 51% owned by an Asian Pacific American, a Black American, an Hispanic American, a Native American, an American woman and/or a Service Disabled Veteran, who resides in Texas and actively participates in the control, operations, and management of the business.
- "IFB" (the acronym for "Invitation for Bid") means the solicitation document for Goods and services that includes Specifications, contract terms and conditions and procedures for submitting a Bid when the Purchasing Act requires a process in which the contract award must be determined primarily based on the price offered.
- "Item" means any service, equipment, good, or other tangible or intangible Personal Property, including insurance and high technology items. High technology items include any service, equipment, or good of highly technical nature, including data processing equipment and

- software; telecommunications, radio, and microwave systems; electronic distributed control systems; and technical services related to those items. Item does not include professional services as defined by the Professional Services Procurement Act.55
- "Lease" means a contract for the possession of Real Property or Personal Property for a stated period of time in return for specified compensation.
- "Modification" means a written document in which the County and the vendor agree to change one or more terms or conditions of a contract.
- "Negotiation" means a discussion in which the County and vendors attempt to reach agreement on differences in desired contract provisions.
- "Official" means any elected or appointed official and their designated representatives.
- "Payment Bond" means a surety bond posted by a contractor to guarantee it will pay that its subcontractors and material suppliers in connection with a specific contract.
- "Performance Bond" means a surety bond issued by a bank or other financial institution that guarantees the fulfillment of the contractor's performance of a specific contract.
- "Personal Property" means anything that can be owned and is movable. It includes tangible things like cars and cloths and computers. It also includes intangible things like money, mortgages, stocks, bonds, copyrights and patents.
- "Product Category Code" means the 8-digit number listed in SAP that classifies Goods and services and is mapped to the chart of accounts. It is used for accounting, compliance, and reporting purposes.

⁵⁵ Texas Government Code, Section 2254.002

"Professional Services" means both

- a) any services directly related to a professional practice that is listed in the Professional Services Procurement Act, including those services within the scope of the practice of accounting; architecture; optometry; medicine; land surveying; and professional engineering, and
- b) services that are not specifically listed in the Professional Services Procurement Act that are commonly referred to as professional because they require technical skill and expertise and primarily mental or intellectual labor, rather than physical.
- "Purchase" means any kind of acquisition, including by a lease or revenue contract.
- "Purchase Order" means the standard electronic document issued by the Purchasing Office to:
 - a) authorize the purchase of Goods and services to be delivered
 - b) Become a contract or Modification of one if accepted by the vendor without qualification
 - Be the contractor's authority to deliver the Goods or services specified and invoice for them, and
 - d) Become the County's commitment to pay the price stated in it if the Goods or services are delivered as specified and accepted.
- "Purchasing Act" means Chapter 262, Subchapter C of the Texas Local Government Code.
- "Purchasing Agent" means the Travis County Purchasing Agent and her designated representatives.
- "Purchasing Board" means a board composed of three district judges selected by the district judges and two members of the Commissioners Court selected by its members.

- "Purchasing Office" means the Office of the Travis County Purchasing Agent.
- "Qualified Architect" means a person who is registered as an architect under the Texas Occupations Code, chapter 1051 and is fully responsible for and in fact complying with that chapter.
- "Qualified Engineer" means a person who is registered as an engineer under the Texas Occupations Code, chapter 1001 and is fully responsible for and in fact complying with that chapter.
- "RFI" (the acronym for "Request for Information") means a general request to the business community including suppliers, consultants and contractors for information which is used as a research tool to gather information about products, services, the capabilities of various suppliers to assist in the decision-making process for developing a well-conceived solicitation document and clarifying the competitive requirements for preparation of specifications and requirements. Must be issued by the Purchasing Office.
- "RFP" (the acronym for "Request for Proposals") means the solicitation document for Goods and services requesting a proposal from vendors, which allows for negotiations after a proposal has been received and before award of the contract which must be procured in compliance with the Purchasing Act.56
- "RFQ" (the acronym for "Request for Qualifications") means the solicitation document that requests details about the qualifications of professionals whose services must be obtained in compliance with the Professional Services Procurement Act⁵⁷.
- "RFS" (the acronym for "Request for Services") means the solicitation document that requests information about qualifications and details of services to be provided and costs for services usually considered Professional Services, but not specifically listed in the Professional

⁵⁶ Texas Local Government Code 262.0295 and 262.030

⁵⁷ Texas Government Code Chapter 2254

- Services Procurement Act, which may be exempted from Competitive Purchasing Procedures under the Purchasing Act.
- "Real Property" means land and whatever is built or growing on it or attached to it and different characteristics of the land may be purchased separately, like mineral rights or right of way.
- "Respondent" means a bidder, proposer or offeror, as applicable.
- "Responsible" means the reputation of being able to perform fully and deliver in compliance with the contract requirements based on past performance, financial capabilities, and business management.
- "Responsive" means compliance with all material aspects of a solicitation document, including submission of all required documents.
- "SAP" means the Travis County Enterprise Resource Planning system which includes modules for accounting, purchasing, and asset management.
- "Shopping Cart" means the automated electronic request from a User Department submitted to the Purchasing Office that:
 - a) requests the Purchasing Office to enter into a contract with a Vendor to purchase Goods or services for its use,
 - authorizes the Auditor to charge its departmental budget when payment is made, and
 - is for internal use only and cannot be used to order Goods or services directly from a vendor.
- "Specification" means a precise description of a Good or service, often including a detailed description of the design and materials to be used to make it or a standard of workmanship, materials, design, etc. required to be met in a piece of work, and any other requirements a vendor must comply with to provide satisfactory performance of the contract, including testing, inspection, acceptance, and preparation for delivery, or preparation or installation for use.

- "Texas Purchasing Laws" means all existing laws enacted by the Texas legislature that govern purchasing by counties including the following:
 - a) County Purchasing Act; (Texas Local Government Code, Chapter 262, subchapter C)
 - b) Contracting and Delivery Procedures for Construction Projects; (Texas Government Code, Chapter 2269)
 - c) Purchasing and Contracting Authority of Municipalities, Counties and certain other local Governments; (Texas Local Government Code, Chapter 271, subchapter A)
 - d) State Contract; (Texas Local Government Code, sec. 262.002 Authority to Purchase Road Equipment and Tires through Comptroller, and Chapter 271, subchapter D State Cooperation in Local Purchasing Programs)
 - e) Texas Council on Purchasing from People with Disabilities; (Texas Human Resource Code, Chapter 122)
 - f) Interlocal Cooperation Contracts; (Texas Government Code, Chapter 791)
 - g) Payment for Goods and Services; (Texas Government Code, Chapter 2251)
 - h) Contracts with Governmental Entities, Non-Residential Bidders; (Texas Government Code, Chapter 2252)
 - Public Works Performance and Payment Bonds; (Texas Government Code, Chapter 2253)
 - j) Professional Services Procurement Act; (Texas Government Code, Chapter 2254, subchapter A)
 - k) Prevailing Wage Rate for Construction of Public Works; (Texas Government Code, Chapter 2258)
 - Governmental Entities sales tax exemption; (Texas Tax Code, section 151.309)
 - m) Workers' Compensation Compliance; (28 Texas Administrative Code, Chapter 110

- Required Notices of Coverage and section 110.108 and 110.110: Reporting Requirements for Building or Construction Projects for Governmental Entities)
- n) Uniform Electronic Transaction Act; (Texas Business & Commerce Code, Chapter 322)
- Resolution of Certain Contract Claims Against the State; (Texas Government Code, Chapter 2260)
- p) Disclosure of Interested Parties; (Texas Government Code, Section 2252.908)
- q) Disclosure of Certain Relationships with Local Government Officers; (Texas Local Government Code, Chapter 176)
- "User Department" means any Department that will or does receive the Goods or services solicited and from whose budget the Goods or services used are or will be paid.
- "Vendor" means a person or business that provides Goods or services and may enter into a contract for the purchase of them with the County.

Version History:

Version	Date	Comments
1.0	April 2, 2019	Adopted
1.1	January 14, 2020	Sections 3 and 18 and Definitions amended

For more information, visit our website:

TravisCountyTx.gov/Purchasing

Please expand your search by visiting Travis County's third-party procurement and bid notification system vendor, www.bidsync.com